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PETITIONER'S DESIGNATION AS TO PRINTING RECORD.

Filed Jan. 23/48.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 12,232.

W. O. CULBERTSON AND GLADYS CULBERTSON,
Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

Now come the Appellants, by their attorney of record, and, pursuant to Rule 23 of the Rules of United States Circuit Court for the Fifth Circuit, respectfully request that the following portion of the record be printed in this case:

The entire record, with the following exceptions:

1. The original petitions and answers filed in Tax Court Dockets 4184 and 4185. These petitions and answers are unnecessary because the same were superseded by amended petitions and answers;

2. The amended petition (together with the deficiency notice attached thereto) of Petitioner, Glayds Culbertson, in Tax Court Docket 4185 and the Respondent's answer thereto. The printing of this petition and answer is unnecessary for the reason that the same are identical with

the amended petition and answer in Docket 4184, with the exception of the petitioner's name, the taxes in controversy (as to Gladys Culberton, 1940—$437.02, and 1941—$8,756.34), an allegation that all property and income of petitioners in 1940 and 1941 were community property, that such parties were husband and wife during such years, and that W. O. Culbertson handled on behalf of the community the various affairs, transactions and activities pertinent to the issue;

3. Respondent's Exhibit B;

4. Respondent's Exhibit C;

5. Respondent's Exhibit D;

6. Respondent's Exhibit E;

7. Respondent's Exhibit F.

Such Exhibits B through F are quite voluminous and only a small portion of each (which will perhaps be designated by the Appellee) is pertinent to the issues here involved.

It is therefore respectfully requested that the original petitions and answers in these cases, and the amended petition and answer in Docket No. 4185, and that Respondent's Exhibits B, C, D, E and F be not printed, but that the same remain available to the Court for inspection, if such inspection is necessary.

Respectfully submitted,

(Signed) BENJAMIN L. BIRD,
Attorney for Appellants.

909-13 Sinclair Building,
Fort Worth, Texas.

State of Texas,
County of Tarrant.

Before me, the undersigned notary public on this Jan. 20, 1948, appeared Benj. L. Bird, who upon being duly sworn stated that he personally deposited in the United States mails, properly stamped, a copy of the foregoing designation, addressed to the Attorney General, Department of Justice, attention Mr. Theron L. Caudle, Washington, D. C., on January 20, 1948.

(Signed) BENJAMIN L. BIRD.

Subscribed and sworn to before me this 20th day of January, 1948.

(Signed) MAMIE MORSE,
(Seal) Notary Public, Tarrant County, Texas.

LETTER OF COUNSEL FOR PETITIONERS STATING THAT THERE IS NO ESSENTIAL DISAGREEMENT BETWEEN THE PARTIES.

Filed Feb. 16, 1948.

#12,232.

Weeks, Bird, Cannon & Appleman.

February 13, 1948.

Mr. Oakley F. Dodd, Clerk,
United States Circuit Court of Appeals,
New Orleans 6, Louisiana.

Re: No. 12232 Culberton vs. Commissioner.

Dear Mr. Dodd:

I acknowledge with appreciation your letter of February 11th dealing with the record to be printed on the above

case. As I understand it, you have before you my request—"Designation of Portions of Record to be Printed" sent to you on or about January 20th, and you have the Attorney General's request—"Designation of Additional Portions of Record to be Printed"—sent to you on or about January 28th, and from these two you will determine the portions of the record to be printed. As I read the two designations there is no essential disagreement between the parties as to what should be printed. Upon reading the two designations together it appears that the entire record should be printed with the following exceptions:

1. The original petitions and answers filed in Tax Court dockets 4184 and 4185;

2. The amended petition, together with the Deficiency notice attached thereto, of Petitioner Glayds Culbertson in Tax Court docket 4185 and the Respondent's answer thereto;

3. Respondent's Exhibit B.

4. Respondent's Exhibit C (being the transcript of evidence in W. O. Culbertson, Jr., et al. vs. W. O. Culbertson, Sr., No. 3040, in the District Court of Dallam County, Texas) with the exception of (that is the following parts of Exhibit C should be printed:) the caption and appearances on page 2, pages 3 and 4, the first six lines of page 5, pages 18-21 inclusive and page 29.

5. Respondent's Exhibit F.

You will note that the Attorney General's designation is in agreement with my designation with the exception that he desires Respondent's Exhibit D and E, and the indi-

cated part of Respondent's Exhibit C, printed. I have no objection whatsoever to the printing of the exhibits and the part of Exhibit C covered by the Attorney General's designation.

Yours very truly,
B. L. BIRD,
(Benjamin L. Bird).

BLB-mj.

cc: Attorney General,
Department of Justice,
Washington, D. C.
Attention: Mr. Theron L. Caudle.

DESIGNATION OF RESPONDENT AS TO PRINTING RECORD.

Filed Jan. 30, 1948.

In the United States Circuit Court of Appeals for the Fifth Circuit.

W. O. Culbertson and Gladys Culbertson, Petitioners,
vs. No. 12,232.
Commissioner of Internal Revenue, Respondent.

The respondent, by his attorney, pursuant to Rule 23 of the Rules of the United States Court of Appeals for the Fiffth Circuit, respectfully requests that the following portions of the record be printed, in addition to the portions designated by the petitioner:

1. The following parts of respondent's Exhibit C, being the transcript of evidence in W. O. Culbertson, Jr., et al.,

v. W. O. Culbertson, Sr., No. 3040, in the District Court of Dallam County, Texas: the caption and appearances on page 2; pages 3 and 4, and the first six lines of page 5; pages 18 to 21, inclusive; page 29.

2. Respondent's Exhibits D and E, being the partnership income tax returns for the years 1940 and 1941 filed by W. O. Culbertson and Sons.

Respectfully submitted,
(Signed) THERON L. CAUDLE,
(Theron L. Caudle),
Assistant Attorney General,
Attorney for Respondent.

January 28, 1948.

DOCKET ENTRIES.

William O. Culbertson, Sr., Petitioner,
vs. Docket No. 4184.
Commissioner of Internal Revenue, Respondent.

Appearances.

For Taxpayer:
Y. D. Harrison, Jr.,
Benjamin L. Bird,
Harry C. Weeks,
R. B. Cannon,
Frank B. Appleman.

For Comm'r:
J. Marvin Kelley.

1944.
Mar. 6—Petition received and filed. Taxpayer notified. Fee paid.

Mar. 6—Copy of petition served on General Counsel.
Apr. 25—Answer filed by General Counsel.
Apr. 25—Request for hearing in Dallas, Texas, filed by General Counsel.
Apr. 29—Notice issued placing proceeding on Dallas, Texas, calendar. Service of answer and request made.
Aug. 9—Hearing set Sept. 25, 1944, Dallas, Texas.
Aug. 24—Motion for continuance of hearing to a later date filed by taxpayer. 8/26/44 Granted ex parte.

1946.

Sept. 16—Notice proceeding transferred from U. S. A. F. to Dallas, Texas, calendar.
Sept. 18—Hearing set 11/12/46, Dallas, Texas.
Oct. 14—Appearance of Benjamin L. Bird, Harry C. Weeks, R. B. Cannon and Frank B. Appleman as counsel filed.
Oct. 14—Designation of attorney for service as Benjamin L. Bird, as counsel of record filed by Y. D. Harrison, Jr.
Oct. 24—Motion for leave to file amended petition, filed by taxpayer. Amended petition lodged.
Oct. 28—Copy of motion and amended petition served on General Counsel.
Nov. 12—Hearing had before Judge Disney on merits.
and 13 Motion of counsel to consolidate granted. Petitioner's motion to file amended petition granted. Respondent's motion to answer amended petition granted. Motion to file and amended petitions filed. Copies served. Motion for leave to file and amended answers filed. Copies served. Petitioner's brief due 12/15/46. Respondent's brief due 1/15/46. Petitioner's reply due 2/1/47.

Dec. 10—Motion for extension to Jan. 1, 1947, to file brief filed by taxpayer. 12/11/46 Granted.
Dec. 23—Motion for extension to Jan. 15, 1947, to file brief filed by taxpayer. 12/23/46 Granted.
Dec. 23—Transcript of hearing 11/12/46 filed.
Dec. 23—Transcript of hearing 11/13/46 filed.

1947.

Jan. 13—Brief filed by taxpayer. 1/13/47 copy served.
Jan. 16—Motion for leave to file briefs as amicus curiae within 20 days filed by Joe G. Montague, attorney for Texas and Southwestern Cattle Raisers' Association. 1/16/47 Granted.
Feb. 17—Motion for extension to 2/28/47 to file brief filed by General Counsel. 2/19/47 Granted.
Feb. 27—Reply brief filed by General Counsel. Served.
Mar. 10—Reply brief filed by taxpayer. 3/10/47 copy served.
June 24—Memorandum Findings of Fact and Opinion rendered, Judge Disney. Decision will be entered under Rule 50. Copy served.
July 23—Computation for entry of decision filed by General Counsel.
July 28—Computation for entry of decision filed by taxpayer.
Aug. 6—Decision entered, Judge Kern, Div. 16.
Oct. 13—Petition for review by U. S. Circuit Court of Appeals for the Fifth Circuit with assignments of error filed by taxpayer.
Oct. 14—Proof of service filed.
Oct. 16—Stipulation for consolidation on petition for review filed.
Nov. 21—Agreed statement of evidence lodged.
Nov. 21—Agreed praecipe for record filed.
Dec. 9—Order, extending the time to 1/30/48 to prepare and transmit the record, entered.
Dec. 22—Agreed statement of evidence filed.

DOCKET ENTRIES.

Gladys Culbertson, Petitioner,
vs. Docket No. 4185.
Commissioner of Internal Revenue, Respondent.

Appearances.

For Taxpayer:
Y. D. Harrison, Jr.,
Benjamin L. Bird,
Harry C. Weeks,
R. B. Cannon,
Frank B. Appleman.

For Comm'r:
J. Marvin Kelley.

1944.

Mar. 6—Petition received and filed. Taxpayer notified. Fee paid.

Mar. 6—Copy of petition served on General Counsel.

Apr. 25—Answer filed by General Counsel.

Apr. 25—Request for hearing in Dallas, Texas, filed by General Counsel.

Apr. 29—Notice issued placing proceeding on Dallas, Texas, calendar. Service of answer and request made.

Aug. 9—Hearing set Sept. 25, 1944, Dallas, Texas.

Aug. 24—Motion for continuance of hearing to a later date filed by taxpayer. 8/26/44 Granted ex parte.

1946.

Sept. 16—Notice transferring proceeding from U. S. A. F. calendar to Dallas, Texas, calendar.

Sept. 18—Hearing set 11/12/46, Dallas, Texas.
Oct. 14—Appearance of Benjamin L. Bird, Harry C. Weeks, R. B. Cannon and Frank B. Appleman, as counsel filed.
Oct. 14—Designation of attorney of record to be served, Benjamin L. Bird, as counsel filed by Y. D. Harrison, Jr.
Oct. 24—Motion for leave to file amended petition filed by taxpayer. Amended petition lodged.
Nov. 12—Hearing had before Judge Disney on merits.
and 13 Motion of counsel to consolidate granted. Petitioner's motion to file amended petition granted. Respondent's motion to answer amended petition granted. Motion to file and amended petitions filed. Copies served. Motion for leave to file and amended answers filed. Copies served. Petitioner's brief due 12/15/46; respondent's brief due 1/15/47. Petitioner's reply brief due 2/1/47.
Dec. 10—Motion for extension to 1/1/47 to file brief filed by taxpayer. 12/11/46 Granted.
Dec. 23—Motion for extension to 1/15/47 to file brief filed by taxpayer. 12/23/46 Granted.
Dec. 23—Transcript of hearing 11/12/46 filed.
Dec. 23—Transcript of hearing 11/13/46 filed.

1947.

Jan. 13—Brief filed by taxpayer. 1/13/47 copy served.
Jan. 16—Motion for leave to file brief as Amicus Curiae within 20 days filed by Joe G. Montague, attorney for Texas and Southwestern Cattle Raisers' Association. 1/16/47 Granted.
Feb. 17—Motion for extension to 2/28/47 to file brief filed by General Counsel. 2/19/47 Granted.
Feb. 27—Reply brief filed by General Counsel.
Mar. 10—Reply brief filed by taxpayer. 3/10/47 copy served.

June 24—Memorandum Findings of Fact and Opinion rendered, Judge Disney. Decision will be entered under Rule 50. Copy served.

July 23—Computation for entry of decision filed by General Counsel.

July 28—Computation for entry of decision filed by taxpayer.

Aug. 6—Decision entered, Judge Kern, Div. 16.

Oct. 13—Petition for review by U. S. Circuit Court of Appeals for the Fifth Circuit with assignments of error filed by taxpayer.

Oct. 14—Proof of service filed.

Oct. 16—Stipulation for consolidation of petition for review filed.

Nov. 21—Agreed statement of evidence lodged.

Nov. 21—Agreed praecipe for record filed.

Dec. 9—Order, extending the time to 1/30/48 to prepare and transmit the record, entered.

Dec. 22—Agreed statement of evidence filed.

Petition in Case No. 4184, with Exhibits "A and B" attached, Omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copied at pages 1 and 5.

Answer in Case No. 4184, Omitted from the Printed Record, Pursuant to Designations of Counsel as to Printing Record, copied at pages 1 and 5.

AMENDED PETITION.

Received Oct. 24, 1946.

Lodged Oct. 24, 1946.

Filed at Hearing Nov. 12, 1946.

The Tax Court of the United States.

W. O. Culbertson, Sr., Petitioner,
vs. Docket No. 4184.
Commissioner of Internal Revenue, Respondent.

Pursuant to authority granted by the Court to amend his petition, W. O. Culbertson, Sr., Petitioner, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Dallas:IRA:'90 D-D) dated December 17, 1943, and as a basis for his proceeding alleges as follows:

1. The petitioner is an individual residing at Dalhart, Dallam County, Texas. The returns for the periods, 1940 and 1941, here involved were filed with the Collector of Internal Revenue for the Second Collection District of Texas at Dallas.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on December 17, 1943.

3. The taxes in controversy are income taxes for the calendar years 1940 and 1941 and are as follows:

Year	Deficiency
1940	$ 554.98
1941	$9,164.34

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The respondent erred in failing and refusing to recognize, for tax purposes, the existence and validity during the tax years of the partnership of W. O. Culbertson and sons composed of W. O. Culbertson, Sr., W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, and in taxing the entire net income of said partnership for 1940 and 1941 to petitioner on the community property basis;

(b) In the alternative, and if said partnership of W. O. Culbertson's sons is not recognized for tax purposes, then respondent erred in failing and refusing to tax the income arising from the cattle and assets of said partnership during 1940 and 1941 to the owners of such cattle and assets in accordance with their ownership therein, to-wit, W. O. Culbertson, Sr., four-eighths (4/8ths), (as community property of himself and wife), W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, each an undivided one-eighth (1/8th);

(c) In the alternative, the Commissioner erred in not allowing petitioner the statutory credits for dependents.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) In 1902 R. S. Coon began the breeding of fine pure blood Hereford cattle and the perfection of Herefords continued to be one of his principal interests until his death. In 1915, R. S. Coon and petitioner organized an equal partnership under the name of Coon & Culbertson to engage in the production, breeding and sale of cattle,

and particularly the breeding for perfection of pure blood Herefords. During the continuation of the partnership of Coon & Culbertson, R. S. Coon (who was childless) formed an attachment for the sons of W. O. Culbertson (hereinafter referred to as Culbertson's sons), W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, and frequently professed admiration for their abilities in handling and breeding cattle. In 1939, Coon was forced to retire from business activities due to his age and health and the partnership of Coon & Culbertson undertook a program of liquidation of their herd of Herefords—which was by general acceptance one of the finest herds of pure blood Herefords in the world. By October, 1939, practically all of the herd, with the exception of an unknown number, but then thought to be approximately 1400 head, of the finest stock had been sold; during October, 1939, petitioner offered to purchase Coon's one-half (1/2) interest in this stock at a per head price substantially less than could have been realized by sales in individual lots. Coon advised petitioner that with respect to this fine stock his primary desire was to assure its perpetuation and the continued breeding for perfection, that he knew of no better method of assuring such perpetuation than through securing the continued services and abilities of Culbertson's sons, who had grown up with the herd, by having them replace him in the partnership; that, therefore, he would accept petitioner's offer and the partnership of Coon & Culbertson would sell all of such fine stock to petitioner on condition that petitioner would in turn sell the Coon interest (an undivided one-half (½) interest) to Culbertson's sons for the same price which petitioner was paying Coon therefor. On November 4, 1939, after a tally of the cattle, Coon & Culbertson executed and delivered to petitioner its bill of sale, with full warranties of title, to the following cattle: 736 registered hereford cows, 2 to 8 years; 52 registered here-

ford heifers coming two; 607 pure bred hereford cows 2 to 8 years of age; 6 hereford heifers; 32 registered hereford bulls; Real Prince Domino 100th and Jay Hawker Domino, the latter two being prize hereford bulls, and petitioner executed and delivered to Coon & Culbertson his check for $99,440.00 in payment for such cattle; on November 6, 1939, petitioner executed and delivered to W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson his bill of sale, with full warranties of title, to an undivided one-half (½) interest in the cattle hereinabove described and said Culbertson's sons executed and delivered to petitioner their joint note for one-half (½) of the amount petitioner had paid to Coon & Culbertson. The said Culbertson's sons then took possession of said cattle. Following the execution and delivery of the aforesaid bill of sale and note, it was agreed by and between petitioner and W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson that said parties would engage in the cattle business as partners under the name of W. O. Culbertson & Sons, that each would contribute thereto his interest in said stock and that all gains and losses would be divided in proportion to the interests owned by each in the cattle, that is, petitioner four-eighths (4/8ths) and each of Culbertson's an undivided one-eighth (1/8th). Thereafter in operating said cattle partnership the division of responsibility and services was largely as follows: petition acted as representative of the partnership in maintaining its contacts with prospective buyers, securing publicity in the cattle industry, initiating sales and borrowing money, and Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, under the management and supervision of W. O. Culbertson, Jr., were responsible for the care, maintenance and breeding of the hereford herd, the delivery of sold cattle and the showing of cattle at Fairs and Shows. The ownership of Culbertson's sons

in said herd and the organization and existence of W. O. Culbertson & Sons was publicized by newspaper articles, letterheads, memberships in the American Hereford Association and otherwise. At the time of the organization of W. O. Culbertson & Sons, Joe Jack Culbertson and Eugene Culbertson were minors but they have since attained 21 years of age and all of the foregoing transactions have been ratified by them since attaining manhood. Between the conveyance of said interests in said cattle to Culbertson's sons on November 6, 1939, and January 1, 1940, the number of cattle which the partnership of W. O. Culbertson & Sons was to receive from Coon and Culbertson was temporarily increased and to cover these additions, grass leases, equipment and horses, the note given by Culbertson's sons to petitioner on November 6, 1939, was canceled and a new joint note in the sum of $57,674.80 was executed by each of Culbertson's sons and delivered to petitioner. Shortly thereafter and in January, 1940, due to an error in the number of cattle which W. O. Culbertson & Sons were to receive, this note was credited with the sum of $5,930.00 leaving a balance due of $51,744.80. During the remainder of 1940 and 1941 this balance due was paid by profits from the partnership and gifts from petitioner and his wife to said Culbertson's sons.

(b) Shortly after the conveyances aforesaid and the organization of W. O. Culbertson & Sons, petitioner on behalf of W. O. Culbertson & Sons took steps to secure the continuation of the line of credit with National Finance Credit Corporation, Fort Worth, Texas; which the partnership of Coon & Culbertson had enjoyed for many years, and in so doing petitioner advised A. A. Wright, Fort Worth Manager, and Weldon Howell, Amarillo representative, of said Credit Corporation, of petitioner's transaction with R. S. Coon, the conveyance of an unvided one-

half (½) interest to Culbertson's sons and the organization of W. O. Culbertson & Sons; Wright advised petitioner that the Credi. Corporation would extend and continue such line of credit but that as two of the partners in W. O. Culbertson & Sons were minors, petitioner should secure from his attorney a document which would pass the Finance Corporation's attorneys enabling the partnership, in the event large loans were required, to pledge the full title to the partnership's cattle. Thereafter, on or about December 5, 1939, petitioner advised his attorney, R. E. Stalcup, of the details of the transactions hereinbefore alleged and requested that he prepare a document to facilitate the borrowing of money from said Finance Corporation. The said attorney prepared a document for the signature of petitioner and his wife, Gladys Culbertson, which purported to convey an undivided one-half (½) interest in about 1400 cows, 35 head of bulls, 50 head of calves, 30 head of horses and certain ranch equipment to W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, subject to certain restrictions and conditions, as of January 1, 1940, and to create a limited partnership. Petitioner and his wife executed said document on December 8, 1939, and forwarded it to the National Finance Credit Corporation—the only use made of said document then or thereafter. In this connection petitioner would show that said document was intended solely to facilitate the borrowing of money as aforesaid and was not intended to alter or effect the preexisted ownership of Culbertson's sons in and to the aforesaid cattle or the preexisting partnership of W. O. Culbertson and Sons. Said document was not placed of record in Dallas County, Texas, or any other County and petitioner attached so little importance to said document that Culbertson's sons were not advised of its execution, did not consent to it and were unaware of its existence until after the beginning of the present

tax controversy in 1943. Upon being informed of the existence of said document and upon the advice of petitioner's attorney, the said Culbertson's sons filed a petition in the District Court of Dallas County (styled W. O. Culbertson, Jr., et al., vs. W. O. Culbertson, Sr. and Gladys Culbertson, No. 3040 on the docket of said Court) to determine, inter alia, the validity of such instrument. The defendants in said proceeding duly answered with respect thereto and on March 22, 1944, after a full trial, the said Court rendered a judgment finding and holding that by virtue of the transactions hereinabove alleged each of Culbertson's sons became the owners of an undivided one-eighth (1/8th) interest in said cattle as aforesaid, that the partnership of W. O. Culbertson & Sons from and after its organization in 1939 was valid and legal and that the document dated December 8, 1939, was entirely void. Said judgment has now become final and binding upon all parts thereto. Petitioner therefore alleges, upon information and belief, that said document of December 8, 1939, was is entirely void.

(c) In the alternative and if the Court should hold the aforesaid document of December 8, 1939, to be valid and effective, either as a conveyance or a trust, or as affecting the prior partnership of W. O. Culbertson & Sons, then petitioner alleges upon information and belief that legally said document could not have divested or limited the rights and titles in or to the cattle hereinbefore described vested prior to December 8, 1939, in Culbertson's sons but that at most the legal effect thereof was to divest petitioner and his said wife of all of their remaining undivided one-half (½) individual interest in the cattle therein described, and vest said remaining undivided one-half (½) interest in said Culbertson's sons subject to the terms and limitations of said instrument, and that therefore the respondent erred in determining

the deficiency shown in the notice of deficiency attached hereto as Exhibit "A".

(d) Petitioner would further show that without regard to the validity for tax purposes of said partnership of W. O. Culbertson & Sons and without regard to the validity of the aforesaid document of December 8, 1939, petitioner is not taxable upon more than his community share of fifty percent (50%) of the income of said partnership during the years 1940 and 1941 and thereafter for the following reasons:

Under petitioner's agreement with R. S. Coon, as hereinabove alleged, petitioner on November 6, 1939, conveyed without limitation or reservation an undivided one-half (½) interest in the aforesaid cattle to W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson and each of said individuals acquired an indefeasible title to an undivided one-eighth (1/8th) interest in said cattle; in and by said conveyance petitioner retained no liens on said one-half (½) undivided interest nor any species of title therein and Culbertson's sons acquired a fee simple title in and to said undivided one-half (½) interest. The income of W. O. Culbertson & Sons during the years 1940 and 1941 (one-half (½) of which respondent seeks herein to tax to petitioner and his wife) was derived from the aforesaid cattle. Petitioner therefore alleges, upon information and belief, that if the partnership of W. O. Culbertson and Sons is held invalid for tax purposes, then the income arising from said cattle in the taxable years is taxable to the owners of said cattle in proportion to their ownership therein, that is W. O. Culbertson and Gladys Culbertson, one-half (½), W. O. Culbertson, Jr., one-eighth (1/8th), Richard Culbertson, one-eighth (1/8th), Joe Jack Culbertson, one-eighth (1/8th) and Eugene Culbertson, one-eighth (1/8th), and respondent erred in determining the deficiency shown in the aforesaid deficiency notice.

(e) In the alternative, and in the event the respondent's determination of tax as set forth in the notice of deficiency is sustained, then petitioner alleges that he is entitled to the statutory credits for dependents with respect to all of his children who were minors during the taxable years, which respondent failed to allow in order to protect the government's interests.

Wherefore, the petitioner prays that this Court may hear this proceeding and hold that respondent erred in determining that the entire net income of the partnership of W. O. Culbertson & Sons constituted taxable income of petitioner and his wife on the community property basis for the years 1940 and 1941; and that respondent erred in failing to determine that said income for the years 1940 and 1941 was taxable in accordance with Section 181-184 of the *Internal Revenue Code*; or in the alternative, in accordance with the ownerships in the cattle and assets producing said 1940 and 1941 income, to-wit, petitioner, four-eights (4/8ths) (as community property) and W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, each one-eighth (1/8th).

W. O. CULBERTSON, SR.,
(W. O. Culbertson, Jr.),
Petitioner.

Dalhart, Texas.

BENJAMIN L. BIRD,
(Benjamin L. Bird),

Sinclair Building,
Fort Worth, Texas.

Y. D. HARRISON, JR.,
(Y. D. Harrison, Jr.),
Counsel for Petitioner.

State of Texas,
County of Dallam.

W. O. Culbertson, Sr., being duly sworn, says that he is the Petitioner above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements therein contained and that the statements contained therein are true except those stated to be upon information and belief and that those he believes to be true.

W. O. CULBERTSON, SR.,
(W. O. Culbertson, Sr.)

Subscribed and sworn to before me this 18th day of October, 1946.

MARIE A. MITCHELL,
Notary Public in and for
Dallas, County, Texas.

(Seal)

EXHIBIT A.

Dallas.
IRA:90D-D.

Directed by Dallas
Office SWD-TS.

Mr. W. O. Culbertson, Sr.,
Post Office Box 1410,
Dalhart, Texas.

Sir:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1940 and 1941, discloses a deficiency of $9,719.32, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at

its principal address, Washington, D. C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, 1200 Tower Petroleum Building, Dallas 1, Texas, for the attention of C:RLP. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,
ROBERT E. HANNEGAN,
Commissioner,
By (Signed) B. W. WILDE,
Internal Revenue Agent in
Charge.

Enclosures:
Statement.
Form of waiver.
FRH/md.

STATEMENT.

Dallas.
IRA:90D-D.

Mr. W. O. Culbertson, Sr.
Post Office Box 1410,
Dalhart, Texas.

Income Tax Liability for the Taxable Years Ended December 31, 1940 and 1941.

Year	Liability	Assessed	Deficiency
1940	$ 685.70	$ 130.72	$ 554.98
1941	10,306.89	1,142.55	9,164.34
Totals	$10,992.59	$1,273.27	$9,719.32

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated September 14, 1942; to your protest dated December 17, 1942; and to the statements made at the conferences held on January 23 and March 22, 1943.

A copy of this letter and statement has been mailed to your representative, Mr. Y. D. Harrison, Jr., First National Bank Building, Fort Worth, Texas, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

Taxable Year Ended December 31, 1940.

Adjustments to Net Income.

Net community income as disclosed by return	$ 9,441.85
Unallowable deductions and additional income:	
(a) Business income	18,281.92
Total	$27,723.77
Nontaxable income and additional deductions:	
(b) Partnership income	8,901.09
Net community income adjusted	$18,822.68
Less: One-half, community interest of your wife	9,411.34
Your net income adjusted	$9,411.34

Explanation of Adjustments.

(a) and (b) It has been determined that the taxable net income realized by the business enterprise, W. O.

Culbertson & Sons, constituted taxable income of you and your wife on the community property basis for the years 1940 and 1941 rather than income from a partnership consisting of you and your four sons for 1940; and of you, your four sons and daughter for 1941 as reported in your returns. The taxable net income as reported in your returns is, therefore, increased as follows:

Taxable net income as corrected...	$18,281.92	$67,981.48
Taxable net income as reported	8,901.09	23,475.48
Increase	$9,380.83	$44,506.00
Your share, 50%	$4,690.42	$22,253.00

The business net income is the same as the distributive income shown by the partnership return except that salaries and wages were understated in amount of $944.00 and depreciation deduction was overstated in the partnership return.

Net income as disclosed by partnership return..		$19,064.21
Adjustments:		
Salaries and wages increased....	$944.00	
Less: Depreciation disallowed...	161.71	782.29
Net business income as corrected.....		$18,281.92

In order to protect the interest of the Government under all circumstances no credit for dependents has been allowed.

Computation of Tax

1940.

Net income adjusted		$9,411.34
Less: Personal exemption		550.00
Balance (Surtax net income)		$8,861.34
Net income subject to normal tax		$8,861.34
Normal tax at 4% on $8,861.34	$354.45	
Surtax on $8,861.34	268.91	
Total tax		$ 623.36
Defense tax (10% of $623.36)		62.34
Total tax		$ 685.70
Correct income tax liability		$ 685.70
Income tax assessed, account #812556		130.72
Deficiency of income tax		$ 554.98

Taxable Year Ended December 31, 1941.

Adjustments to Net Income.

Net community income as disclosed by return	$16,676.68
Unallowable deductions and additional income:	
(a) Business income	67,981.48
Total	$84,858.16

Nontaxable income and additional deductions:	
(b) Partnership income	23,475.48
Net community income adjusted	$61,382.68
Less: One-half, community interest of your wife	30,691.34
Your net income adjusted	$30,691.34

(a) and (b) See explanation to items (a) and (b), for year 1940 hereinabove.

The business net income is the same as the distributive income shown by the partnership return filed, except that the inventory as at December 31, 1941, has been determined to be $236,687.90 instead of $232,826.00 (difference $3,861.90) reported, depreciation deducted in amount of $1,681.22 was overstated in amount of $313.57, and cost of supplies, etc., was overstated in amount of $4.68.

Net income as disclosed by partnership return	$63,801.33
Add: Closing inventory increased	3,861.90
Depreciation disallowed	313.57
Cost of supplies, etc., decreased	4.68
Net business income, as corrected	$67,981.48

You have been allowed a deduction of $350.00 personal exemption, your wife having been allowed $1,150.00, the remainder of the marital personal exemption.

Computation of Earned Income Credit.

	Husband	Wife
Earned Income:		
Income from business (Not in excess of 20% of $67,981.48)	$ 6,798.15	$ 6,798.15
Earned net income	$ 6,798.15	$ 6,798.15

Your entire net income	$30,691.34	$30,691.34
Earned income credit:		
(10% of $13,596.30)	$ 679.82	$ 679.82

Computation of Tax.

1941.

Net income adjusted		$30,691.34
Less: Personal exemption		350.00
Balance (Surtax net income)		$30,341.34
Less: Earned income credit		679.82
Net income subject to normal tax		$29,661.52
Normal tax at 4% on $29,661.52	$1,186.46	
Surtax on $30,341.34	9,120.43	
Total tax		$10,306.89
Correct income tax liability		$10,306.89
Income tax assessed, account #902870		1,142.55
Deficiency of income tax		$9,164.34

36 ANSWER TO AMENDED PETITION.

Filed at Hearing, Dallas, Texas, Nov. 12, 1946.

The Tax Court of the United States.

W. O. Culbertson, Sr., Petitioner,
vs. Docket No. 4184.
Commissioner of Internal Revenue, Respondent.

Comes now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed in the above-entitled appeal, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the amended petition.

4 (a), (b) and (c). Denies that respondent's determination is based upon errors as alleged in subparagraphs (a), (b) and (c) of paragraph 4 of the amended petition.

5. (a). Admits that on November 4, 1939, after a tally of the cattle, Coon & Culbertson executed and delivered to petitioner its bill of sale, with full warranties of title, to the following cattle: 736 registered hereford cows, 2 to 6 years; 52 registered hereford heifers coming two; 607 pure bred hereford cows 2 to 8 years of age; 6 hereford heifers; 32 registered hereford bulls; Real Prince Domino 100th and Jay Hawker Domino, the latter two being prize hereford bulls, and petitioner executed and delivered to Coon & Culbertson his check for $99,400.00 in payment for such cattle. Denies the remaining material allegations of fact set forth in subparagraph (a) of paragraph 5 of the amended petition.

5 (b): Admits that R. E. Stalcup prepared a document for the signature of petitioner and his wife, Gladys Culbertson, which purported to convey an undivided one-half (½) interest in about 1400 cows, 35 head of bulls, 50 head of calves, 30 head of horses and certain ranch equipment to W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, subject to certain restrictions and conditions; as of January 1, 1940, and to create a limited partnership. Admits that petitioner and his wife executed said document on December 8, 1939. Denies the remaining material allegations of fact set forth in subparagraph (b) of paragraph 5 of the amended petition.

5 (c), (d) and (e). Denies the material allegations of fact set forth in subparagraphs (c), (d) and (e) of paragraph 5 of the amended petition.

Denies generally and specifically each and every allegation contained in the amended petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination be approved.

(Signed) J. P. WENCHEL, JMK.
(J. P. Wenchel),
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:
JAMES L. BACKSTROM,
Division Counsel.
J. MARVIN KELLEY,
Special Attorney,
Bureau of Internal Revenue.

JMK:jr. 11-5-46.

Petition in Case No. 4185, with Exhibits "A" and "B" attached, omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copied at pages 1 and 5.

* * * * * * *

Answer in Case No. 185, omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copned at pages 1 and 5.

* * * * * * *

Amended Petition in Case No. 4185, with Exhibits Attached, omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copied at pages 1 and 5.

* * * * * * *

Answer to Amended Petition in Case No. 4185, omitted from the Printed Record, pusuant to Designations of Counsel as to Printing Record, copned at pages 1 and 5.

The Tax Court of the United States.

William O. Culbertson, Sr.,
vs
Commissioner of Internal Revenue, Respondent.

Gladys Culbertson,
vs
Commissioner of Internal Revenue, Respondent.

Docket Nos. 4184, 4185.

Benjamin L. Bird, Esq., and *Y. D. Harrison, Jr., Esq.*, for the petitioners.
J. Marvin Kelley, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION.

DISNEY, *Judge:* These cases, consolidated for hearing and disposition, involve deficiencies in income tax as follows:

Petitioner	Docket Number	Income Tax Deficiencies 1940	1941
William O. Culbertson	4184	$554.98	$9,164.34
Gladys Culbertson	4185	437.02	8,756.34

The issues to be determined are: (1) Was the business enterprise, W. O. Culbertson and Sons, operated as a partnership, for income tax purposes, composed of petitioner and his four sons? (2) In the alternative, if no valid partnership existed, were the petitioners taxable on one-half and each of the sons taxable on one-eighth of the income arising from the business enterprise of W. O.

Culbertson and Sons by virtue of their alleged ownership of the assets of the business?

From evidence both documentary and oral, we make the following:

FINDINGS OF FACT.

The petitioners, William O. Culbertson and his wife, Gladys Culbertson, reside at Dalhart, Dallam County, Texas. Their income tax returns for the years 1940 and 1941 were filed with the collector of internal revenue for the second collection district of Texas, at Dallas, Texas. Since the transactions involved in this proceeding pertain particularly to William O. Culbertson, the husband, he will hereafter be referred to as petitioner.

Five children, four sons and one daughter, were born to petitioner and his wife, all of whom are now living. They are W. O., Jr., Richard, Joe Jack, Eugene and Fannie. On January 1, 1940, at the beginning of the first taxable year here involved, they were 24, 22, 18, 16 and 14 years of age, respectively. Richard was married in the spring of 1940, and W. O., Jr., was married in December 1940.

From about 1915 to October 1939 petitioner and R. S. Coon were engaged in the cattle and ranching business as a partnership under the firm name of Coon and Culbertson. They bred and produced pure bred, registered Hereford cattle.

Since the Culbertson boys were about 12 years of age they have done odd jobs on the ranch during summer vacations and sometimes on week-ends, such as riding, looking after cattle, tatooing calves, taking care of breeding records, etc. W. O., Jr., finished high school in 1933 and worked on the ranch until the fall of 1934, when he

entered Texas A. & M. College, and took a course in animal husbandry. During the next four years he worked on the ranch between school terms, about three months each summer. He finished Texas A. & M. College in May 1938 and became foreman of the ranch for Coon and Culbertson, and continued in that capacity until the dissolution of that partnership in the fall of 1939. For his services as foreman he received $100 per month and board. During the time W. O., Jr., served as foreman for Coon and Culbertson, the only purchase he made for the organization was one bull, and he has made no purchases for the organization of W. O. Culbertson and Sons.

During the spring of 1939, due to the age and health of Mr. Coon, it was determined to liquidate the herd and dissolve the partnership. Coon and Culbertson while liquidating their business sold about 350 head of Bradfords (a cross between Brama and Hereford cattle) to the four Culbertson boys. Before the transaction was completed, a former customer of Coon and Culbertson, and a good friend of all parties, attempted to buy the Bradfords from R. S. Coon. At the suggestion of Coon the sale was changed from one of the Culbertson boys to the former customer, by an additional payment by him to the boys of about $5 per head profit. By October 1939, the herd had been reduced to approximately 1,500 registered cattle. About that time petitioner offered to purchase the remainder of the herd at a price "around $65 per head." Petitioner's offer was accepted by Mr. Coon, provided petitioner would sell his four sons an undivided one-half interest in the herd at the same price. Petitioner advised Coon that he would see the boys about the matter. Soon thereafter petitioner went to the ranch, which was at Beuyeros, New Mexico, 93 miles from Dalhart. There he saw W. O., Jr., and talked to him about the "deal." W. O., Jr., was enthusiastic about the matter. He later talked to Joe Mack and Eugene, and "they

thought it was mighty nice they could buy the cattle at the price." Richard was at Texas A. & M. College at that time. Petitioner offered to finance the purchase of the undivided one-half interest for the boys.

On November 4, 1939, Coon and Culbertson executed a bill of sale to petitioner covering the cattle then owned by that partnership, and petitioner gave his check to Coon and Culbertson in payment therefor in the amount of $99,440. Two days later, on November 6, 1939, petitioner and his wife, Gladys, executed a bill of sale to W. O., Jr., Richard, Joe Jack and Eugene covering an undivided one-half interest in the same cattle which petitioner had purchased on November 4. A bill of sale was handed to W. O., Jr., who gave it to the bookkeeper and "told him to file it." The next day the boys gave a note to the petitioner for $49,720, at 4 per cent interest, due one year from date, for the one-half undivided interest in the cattle described in the bill of sale.

The partnership of Coon and Culbertson owned some other properties, including a few head of cattle, grass leases, saddle horses and odds and ends, that were not conveyed to the petitioner or his sons in the foregoing transaction. A new note dated January 1, 1940, in the amount of $57,674.80, at 4 per cent interest, due one year from date, executed by the four sons and payable to petitioner and his wife, was given to them to cover the additional properties mentioned in this paragraph. Soon thereafter, however, Coon and Culbertson sold the additional cattle covered by the note of January 1, 1940, and that note was credited with $5,930. This credit, along with others appears on the back of the note, as follows:

Credit of January 1940 overcharge on original Note	$ 5,930.00
Balance due on Note	$51,744.80
Credit Dec. 30/1940 Gift as shown on WOC	

1940 Income report & Ledger account	4,000.00
Balance due on Note	47,744.80
Credit June 10th 41	30,000.00
Balance due on the above note as of June 10th 41	17,744.80
Credit	
June 10th 1941 Gift	17,744.80

Paid in Full as of June 10th 1941.

A local Dalhart paper, under date of December 2, 1939, quoting "Culbertson," announced the fact of the dissolution of the Coon and Culbertson partnership and that the business would be operated by Culbertson and his boys under the name of Culbertson and Sons. A bank account was opened in the name of W. O. Culbertson and Sons—upon which petitioner, his four sons and bookkeeper could check; however, most of the checks were signed by the bookkeeper, Mr. Williams. On November 13, 1939, the Coon and Culbertson membership in the American Hereford Association, at Kansas City—the Central United States Registry for all registered Hereford cattle—was changed to W. O. Culbertson and Sons and a certificate issued. Neither newspaper article nor stock certificate called Culbertson and Sons a partnership.

On December 31, 1940, petitioner inventoried the cattle involved herein at an average price of $60 per head.

After the formation of the organization, W. O. Culbertson and Sons, W. O., Jr., continued his work as foreman of the ranch under the same arrangements as previously existed under Coon and Culbertson.

W. H. Coon, (R. S. Coon's nephew, attorney-in-fact and manager of R. S. Coon's Panhandle interests) on or about

November 23, 1939, wrote to A. A. Wright, manager of the National Finance Credit Corporation, Fort Worth, Texas, in part as follows:

> Mr. W. O. Culbertson and Sons will take over the Coon & Culbertson herd November 1st, 1939. Mr. R. S. Coon is selling his interest in the cattle to this new firm—W. O. Culbertson and Sons.
>
> Mr. Culbertson would like to establish a credit with the National Finance Corporation and if this is agreeable with you we would like to have the herd inspected on the 29th of this month. We will tally the cattle over to Mr. Culbertson at the same time your representative inspects the cattle. * * *

Sometime after the date of the above letter petitioner talked to A. A. Wright about borrowing funds for W. O. Culbertson and Sons and explained that there were minors involved. Upon learning that two of the sons were minors, Wright advised petitioner to have prepared some kind of document whereby he could qualify authorizing him to sign for the minors. Following this advice petitioner called on his attorney and explained to him the "Partnership" in detail and instructed him to prepare a document whereby he could sign mortgages and borrow money, a document their (the finance Co.) attorney would accept. Pursuant thereto the attorney prepared a document which was read and understood by petitioner. In essential part it reads:

> Whereas, the undersigned, W. O. Culbertson and Gladys Culbertson, husband and wife, are the owners of certain live stock, land leases and ranch equipments and supplies, located in Harding County, New Mexico, and,

Desiring to make provisions for the welfare of our sons, W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, and desiring to establish them in business, as and when they arrive at a proper age to engage in business; and, further, desiring to induce our said sons after they reach such state of maturity, to contribute their time and services, in building up and establishing a common family estate, and desiring to suitably reward them for their assistance to us in so doing, and in order to establish with them a limited partnership in a ranching enterprise to be hereafter known as W. O. Culbertson & Sons;

Therefore, Know All Men By These Presents, That we, W. O. Culbertson and Gladys Culbertson, for and in consideration of the sum of Ten Dollars to us paid, and other good and valuable consideration considera-tion, [sic] do hereby and by these presents sell and convey unto W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, and to each, an undivided one-eighth interest, in and to the following described property, to-wit:

[Followed by a description of the property as in the bills of sale heretofore considered.]

This conveyance is made subject to the following conditions and stipulations, to-wit:

I. The grantors, W. O. Culbertson and Gladys Culbertson, reserve to themselves, the sole and exclusive right and control and management of such properties herein conveyed, with increases thereof, until the time that the youngest of our said sons living shall have arrived at the age of twenty-one years; including the

right of sale, or exchange of said property or any part thereof, and the right to purchase or lease lands for the use of the ranch enterprise, either out of earnings or of sales of property on hand; the right to purchase additional livestock; the right to borrow money on the credit of part or all of the property belonging to the ranch, and to pledge the property for security for such money so borrowed; the right to increase by purchase, or to diminish by sale, the livestock on said ranch; to sell any equipment or supplies now belonging to the ranch or to purchase other equipment and supplies; to invest the money derived from sales or from earnings of the ranch as they may deem proper; in fact, to manage and control the property herein conveyed, without restrictions and in such manner as may by them be deemed proper, until the youngest surviving son shall have arrived at the age of twenty-one years; and until such time, it shall not be necessary to obtain the verbal or written consent of either of said sons, or of any instrument in writing from either of said sons, to any transaction desired to be done in the premises, by the grantors herein.

2. It is specifically made a condition of this conveyance, that should there be at any time before the youngest surviving son shall have arrived at the age of twenty-one years, any losses sustained in the operation of such ranch, or other interprises [sic] involved, then the grantors, nor either of them, shall become personally liable to the grantees herein, or to either of them, for any part of such losses, but such losses, if any, shall be bourne [sic] by such ranch interprise, [sic] and not by any individual owner of any interest therein.

3. It is further made a condition of this conveyance, that neither of our said sons, shall have the right of withdrawal of any part of his interest in such ranch interprise, [sic] or the sale of same, until the youngest surviving son shall have reached the age of twenty-one years, but at such time either one, or all of such sons, shall have the right of withdrawal from such partnership, and shall be entitled to receive his interest therein, but his interest shall be equal to an undivided one-eight in value, or property in kind, after all liabilities, if any, of such ranch or other interprise [sic] has been liquidated.

4. In the event of the death of either of our said sons, prior to such time that the youngest surviving son shall have reached the age of twenty-one years, such deceased son leaving no surviving wife or child or children born in lawful wedlock, then such interest of such deceased son shall vest in his father and mother and surviving brothers and sisters, or the surviving [sic] ones, according to the rule of descent and distribution prevailing in Texas. In the event of the death of either of our said sons, before the youngest of our surviving sons shall have reached the age of twenty-one years, such deceased son leaving surviving him, a wife or child or children born in lawful wedlock, then such share of such deceased son shall go to and vest in such surviving wife and child or children born in lawful wedlock, according to the law of descent and distribution prevailing in Texas.

5. In the event of the death of grantor, Gladys Culbertson, prior to the time that our youngest surviving son reaches the age of twenty-one years, leaving surviving her, grantor W. O. Culbertson, then the exclusive control and management of said properties, as

provided in paragraph No. 1 hereof, shall vest in said W. O. Culbertson along. In the event of the death of said W. O. Culbertson, prior to the time the youngest surviving son shall have reached the age of twenty-one years, and said Gladys Culbertson then still being alive, the joint management of said properties, as provided in said paragraph I. herein, shall vest in said Gladys Culbertson and the oldest surviving son. In the event of the death of both W. O. Culbertson and Gladys Culbertson before the surviving youngest son shall reach the rge of twenty-one years, then the right of management and control, as provided in paragraph No. I. hereof, shall vest in the two oldest surviving sons.

* * * * * * *

In Testimony Whereof, witness our hand, at Dalhart, Texas, this the 8th day of December, A. D. 1939, but to become effective on the 1st day of January, A. D. 1940.

After which followed petitioner's and his wife's signatures and a notary public's affidavit to the effect that the instrument was executed "for the purpose and consideration therein expressed."

The foregoing document was executed by petitioner without inquiring of his four sons as to whether they would agree to it. W. O., J., was not advised of the document until sometime after May 1943.

Later, during 1940, petitioner and his wife, Gladys, executed a document concerning their daughter, Fannie. The document reads, in part, as follows:

WHEREAS, on the 8th day of December, 1939, W. O. Culbertson, and wife, Gladys Culbertson, executed a certain trust instrument, by the terms of which a

limited partnership was created between themselves and their sons, W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, and by the terms of which a conditional conveyance was made to each of said sons of an undivided one-eighth interest in and to certain properties described in said trust instrument; and the Grantors therein retained to themselves an undivided one-half interest in and to the property so described, a true copy of such trust instrument in so far as necessary to reflect the tenor and effect of this conveyance now about to be executed by the said W. O. Culbertson and Gladys Culbertson, and;

Whereas, said trust instrument, and the partnership thereby created, is now in full force and effect, and;

Whereas, the said W. O. Culbertson and wife, Gladys Culbertson, now desire to make conveyance to their minor daughter, Fannie Culbertson, a like conveyance of an interest in such partnership, equal to the interest conveyed to each of said sons;

Now, Therefore, we, W. O. Culbertson and wife, Gladys Culbertson, for an [sic] consideration of the sum of Ten Dollars ($10.00) paid, and for other good and valuable consideration, do hereby and by these presents grant, sell and convey unto the said Fannie Culbertson an undivided one-eighth interest in and to all the property now owned and held by the co-partnership of W. O. Culbertson and Sons, wherever such property may be now located, and being an undivided one-fourth part of the partnership interests now owned and held by said W. O. Culbertson and Gladys Culbertson, but this conveyance of such interests is made subject to all the terms and conditions of the said trust instrument, dated 8th day of December, 1939, a copy of which being hereto attached and made a part hereof.

In Testimony Whereof, witness our hand at Dalhart, Texas, this 31st day of December, 1940.

The document was signed and executed before a notary public in a similar manner to the aforementioned document.

At about the same time Fannie gave a note to petitioner in the amount of $13,488.27 covering the purchase of the above-mentioned one-eighth interest. The note was satisfied by a credit of the full amount through a gift to her from petitioner.

On or before June 10, 1941, W. O. Culbertson and Sons borrowed $60,000 from the National Finance Credit Corporation which was "turned over" to petitioner. Half of the amount represented the credit of $30,000 appearing on the back of the note given by the boys to petitioner and his wife, dated January 1, 1940. The boys did not sign anything in connection with this loan. It was handled by petitioner. The loan was repaid with proceeds from the ranch.

A partnership return of income for W. O. Culbertson and Sons for the year 1940 was filed with the collector of internal revenue on March 10, 1941. The return was sworn to by the petitioner. In the return it is stated that the partnership was organized on January 1, 1940. Attached to the return are certain schedules which were prepared on letterheads of W. O. Culbertson and Sons. In the upper left hand corner appears the name of W. O. Culbertson, while in the upper right hand corner appears the names of the four sons. The return contained the following information in Schedule "J":

1. Name and address of each partner * * *.	2. Ordinary net income * * *.
W. O. Culbertson, Dalhart, Texas.....	$8,901.09
W. O. Culbertson, Jr., Bueyeros, N. Mex.	3,425.28

Richard R. Culbertson, Dalhart, Tex.	2,287.28
Joe Jack Culbertson, Dalhart, Texas	2,225.28
Eugene Culbertson, Dalhart, Texas	2,225.28
Totals	$19,064.21

The return also contained the following information, on page 1:

Gross receipts from business or profession—$29,237 17; merchandise bought for sale—$4,665.55.

A similar return was filed for W. O. Culbertson and Sons for the year 1941. In that return were certain schedules prepared on letterheads of W. O. Culbertson and Sons. In the upper right hand corner thereof were the names of the petitioner, his wife, Gladys Culbertson, and their five children. Directly underneath was the statement: "All equal owners in W. O. Culbertson and Sons." The return contained the following information in schedule "J":

1. Name and address of each partner * * *.	2. Ordinary net income * * *.
Miss Fannie Culbertson	$ 7,825.17
Richard R. Culbertson	7,825.17
Joe Jack Culbertson	7,825.17
Eugene Culbertson	7,825.17
W. O. Culbertson, Jr.	9,025.17
W. O. Culbertson, Sr.	23,475.48
Totals	$63,801.33

The return also contained the following information on page 1: Gross receipts from business or profession—$198,-884.85; merchandise bought for sale—$172,829.02. It was stated on page 4 that the partnership was organized on January 1, 1941.

On a letterhead used by W. O. Culbertson and Sons in April 1946 there appears in the upper right hand corner thereof the names of W. O. Culbertson, Sr., and Gladys Culbertson and the five Culbertson children. Directly underneath the names is this statement: "All one-sixth owners in W. O. Culbertson and Sons."

Richard, Joe Jack and Eugene finished high school. Richard finished Texas A. & M. College in May 1940 and went directly into the Army. Joe Jack attended Texas A. & M. College but before graduation "he had to drop out due to the war." At the time of the hearing of this case, he had gone back to finish the last term. Eugene, at the time of the hearing of this case, was attending a business college at Amarillo.

W. O., Jr., is the only son who was rendering any kind of services or taking any part in the ranch operations at the time of this hearing. Fannie helps operate a dry goods store in Dalhart, Texas, which is operated "in conjunction with out cattle business." No accounts for the store are set up on the books of W. O. Culbertson and Sons.

Richard, Joe Jack and Eugene were paid wages for their services during the summer months.

During the taxable years petitioner looked after the office in Dalhart. There he contacted buyers, handled contracts, made purchases and sales of cattle, and looked after the "borrowing of money" and the general business of the office. Petitioner was at the ranch frequently during the taxable years, an average of a little more than once each month. Petitioner did not receive any salary for his services.

The book for the organization W. O. Culbertson and Sons were set up October or November 1939. There are no accounts set up in the books showing alleged partnership.

Sometime in 1943, after a revenue agent had questioned the validity of the partnership of W. O. Culbertson and

Sons, petitioner went to Fort Worth and discussed the matter with the manager of the National Finance Credit Corporation, who suggested he contact an accountant. The accountant was employed in the matter by petitioner and he advised petitioner to institute court proceedings to determine whether the partnership was valid. Sometime after May 1943 petitioner wrote a letter to W. O., Jr., advising him, for the first time, about the existence of the document dated December 8, 1939, and it was decided to institute proceedings in the District Court of Dallam County concerning the validity of the partnership and the document executed by petitioner and his wife on December 8, 1939. Petitioner employed an attorney. A petition was filed in the name of the five children of petitioner on February 23, 1944, and on February 26, 1944, the petitioner and his wife, who were named as defendants, filed their answer. The petitioner was the only person present at the hearing except his attorney and the court officials. The petitioner there testified, in part: "I followed Mr. Wright's request, to get something in the form of a partnership so he could carry me, so he could carry my finances with him"; also that the document of December 8 was executed following Mr. Wright's suggestion. Upon the evidence submitted, the court entered its decree that the document of December 8, 1939, was void and that the partnership was in all things valid.

The essentials of fine Hereford breeding involves three phases. One is feed and care and an understanding of type of feed, for certain ages and classes of animals. Constant care is required, and it is essential to have proper brood blood lines; also to maintain those lines and to understand outcrops and the types of breeding desired.

OPINION.

The questions presented to us here are whether the business organization of W. O. Culbertson and Sons constitutes a partnership for Federal income tax purposes, or, in the alternative, whether the income from the business should be taxed in accordance with the alleged ownership of the assets of the business.

The respondent denies both the principal and the alternative contentions.

In support of his first contention petitioner argues that "This is not a cause where a father has control of a business prior to the creation of a partnership with relatives, and the same control and dominion after the partnership was created"; further, that "The only way that any of the Culbertsons acquired Coon's one-half [interest] was by virtue of the formation of this partnership." He claims that three things are clear, and upon these he primarily bases his case. They are:

> (1) The Culbertson boys really acquired their one-half interest from R. S. Coon.
>
> (2) R. S. Coon, and not petitioner, originated the conveyance of an undivided one-half interest in the cattle to the Culbertson boys and the formation of W. O. Culbertson and Sons.
>
> (3) An indeterminate part of the value of the cattle the boys contributed to W. O. Culbertson and Sons originated with them in the first instance—the difference between the actual value and the sales price of the cattle included in the bills of sale—for the boys were quite clearly third party beneficiaries of the Coon-petitioner contract.

Respondent, on the other hand, argues that the case is to be decided by the principles announced in *Commissioner v. Tower*, 327 U. S. 280, *and Lasthaus v. Commissioner*, 327 U. S. 293. He contends that the sons have not met any of the requirements announced therein. The portion alluded to in the *Tower* case is as follows:

> There can be no question that a wife and a husband under certain circumstances, become partners for tax, as for other, purposes. If she either invests capital originating with her or substantially contributes to the control and management of the business or otherwise performs vital additional services, or does all of these things she may be a partner as contemplated by 26 U. S. C. §§ 181, 182. The Tax Court has recognized that under such circumstances the income belongs to the wife. A wife may become a general or a limited partner with her husband. But when she does not share in the management and control of the business, contributes no vital additional service, and where the husband purports in some way to have given her a partnership interest, the Tax Court may properly take these circumstances into consideration in determining whether the partnership is real within the meaning of the Federal revenue laws.

Our first consideration is to examine the business transactions to determine whether, within the language of the *Tower* case, the Culbertson boys actually invested any capital in the alleged partnership. In this respect petitioner argues that the boys did, in fact, buy their interest from Coon. With this theory we can not agree. W. O. Culbertson testified that he told Wright that Coon sold to W. O. Culbertson and Sons—not to the boys, and Coon's nephew, writing to Wright about November 23, said Coon was selling to W. O. Culbertson and Sons. Ac-

cording to the evidence placed before us there was a definite sale and bill of sale from the partnership of Coon and Culbertson to petitioner covering the assets that later formed the nucleus of the business known as W. O. Culbertson and Sons. At a later date, a bill of sale indicated a sale of half that interest to the boys and the boys gave to petitioner and his wife a note that called for payment within one year. Thus it is seen that in fact the boys did secure their interests from their father. However, even if as urged by the petitioner we consider the father a conduit between the boys and R. S. Coon in the purchase of the cattle, the result here is, in our view, not different. If the father did not furnish the cattle themselves, he furnished the money to obtain them, paying Coon for them, conveying them to the sons as to a half interest, and taking his sons' notes. (The fact that R. S. Coon inquired about the boys' finances and, though it is not shown, might have financed them, is immaterial. He did not do so, and their father did.) The sons furnished no capital at that time, and were put into the alleged partnership with their father's contribution. This taken with the later facts that to the extent of about $21,000 their notes were given back to them, and the business itself, not they, paid off the other $30,000, makes it clear that the sons made no capital contribution, within the sense of the *Tower* case. There is no essential difference, under all the facts here, between a gift of a capital contribution by a father or husband in the beginning, and the gift of it later when the father forgives the notes, particularly in the light of the father's testimony, relative to whether he felt the boys would be able to pay in the one year specified in the note. "I never—I didn't give it too much thought." We think he did not expect or intend them to pay it. Morever, the conveyance of the cattle, without other consideration than the notes, later forgiven, except as paid by the business, is seen as so completely a part of

the formation of the alleged partnership as to constitute an incompleted gift, as considered in the *Tower* case, so as to place in the hands of the sons no capital contributable by them to the partnership.

The gifts made by petitioner are within the language of the *Tower* case and therefore do not establish a basis for capital contribution sufficient to establish an interest in the alleged partnership. Neither does the payment of the $30,000 out of the proceeds of the business come within the language of "capital originating with her [the alleged partner]." The *Lasthaus* case is in point here, in that in that case there was a series of notes signed and payment made out of the business, but it was not sufficient to establish a basis for invested capital.

We can ascribe no weight to the petitioner's contention that an indeterminate part of the value of the capital—difference between actual value and price paid—came from Coon to the sons and was contributed by the partnership to them in the light of the evidence that the father inventoried the cattle, as of December 31, 1940, at $60 a head, whereas the purchase price was about $65 a head. There is nothing in the record convincing that the purchaser was really getting the cattle at a bargain price, and even if there was, nothing from which we could soundly regard the bargain as a gift from Coon to the boys.

We consider next whether the sons contributed such services as, under the *Tower* case and others to the same effect, would justify recognition of a partnership. As to the three younger sons, it is clear, we think, that there was no such service contribution. Though we have no doubt that the boys assisted in a laudable filial spirit on the ranch, we discern nothing constituting what we think is a requisite contribution to a real partnership. They appear to have done no more after the alleged partnership than before. W. C., Jr., is in a different position in

that he was older and was earning a salary as foreman of the ranch, but that fact only serves to refute a contribution of such service by him as would support a partnership. He was paid both before and after formation of the alleged partnership, at about the same rate for about the same services. We see none contributed to the partnership. We think in general that services do not greatly affect this case. We find no son adding "vital additional service" which would take the place of capital contributed because of formation of a partnership.

In addition to the above inquiry as to the presence of those elements deemed by the *Tower* case essential to partnerships recognizable for Federal tax purposes, other facts in our opinion compel a conclusion that there is not here presented such partnership. Looking at all of the facts, we can not give to the bill of sale made to the boys on November 4, the weight urged by the petitioner, as against the document of December 8. Though urged by the petitioner, as against the document of December 8. Though W. O., Jr., at least did not know of the latter document for a long time (nothing definite indicates whether the other boys did or not), we can not regard that fact so important as urged. The father, asked about his failure to disclose that document, testified that "I didn't think they'd be concerned in it," also that he didn't think so," when asked if he did not think the boys would be interested in knowing about the line of credit to establish which he said he drew up the document of December 8. We think that is right—that this was a family matter (requiring close scrutiny), so managed by the father that the sons were not concerned as to the form it took, or in the way their father handled it, for they would be treated right by their parents. This is indicated, we think, by the two other cattle deals in which the sons were interested—as to the Brafords where their purchase was, in effect, disregarded, when another

wanted to buy what they had bought, and as to the extra cattle which were taken over about January 1, 1940, but were later sold by *Coon and Culbertson*, not by Culbertson and Sons. These purchases by the sons were just as real, it seems to us, as that of the herd on November 4, yet the sons at least permitted their elders to dispose of the Brafords and the extra cattle. Though the publicity given to "Culbertson and Sons" by newspaper and the change of the American Hereford Association stock to Culbertson and Sons do indicate that in November the boys were considered in connection with the cattle business, the whole record before us fails to convince that there was a partnership from that time, in the face of the instrument of December 8 by the father and mother. Neither the newspaper article nor the stock certificate in American Hereford Association calls Culbertson and Sons a partnership. The newspaper article referred to "Culbertson and Sons, the name under which Culbertson and his sons will operate"—Quoting Culbertson. The instrument of December 8, 1939, if here given effect, precludes the idea of a partnership and is not relied upon by the petitioner here, but was, at his instance, set aside by a local court. [The decree is clearly collusive and without effect here. *Freuler v. Helvering*, 291 U. S. 35; *Francis Doll*, 2 T. C. 276; affd., 149 Fed. (2d) 239; cert. denied 326 U. S. 725; *Eric Krag*, 8 T. C. ..... (No. 123, promulgated May 16, 1947).] Though urged, in effect, that it can not stand against the bill of sale of November 4, we think the reasons given are insufficient, and that it should be here given effect. The question of fact here is: When and by what instrument or agreement was the association between parents and sons in the cattle business effected? The petitioner says the bill of sale of November 4 was the basis for an oral agreement of partnership about that time. Yet, he solemnly represented to the finance company that on December 8 he and wife were the owners

of the same cattle described in the bill of sale, and that he was then making a conditional conveyance to them, and therein he retained, *inter alia*, such broad powers as to preclude consideration of the status created as partnership. We can not believe, as contended in effect, that the finance company knowing of the bill of sale to the sons, nevertheless lent large sums of money without the sons' signatures. Had the finance company's attorney been apprised of the bill of sale, it is inconceivable that he would have approved loans on the cattle without the signatures of the sons. If the bill of sale were considered effective, no one but the sons could authorize the father to borrow on the cattle. He could not himself give himself authority. From this we believe not only that the finance company was not informed of any transfer of cattle to the boys (though informed in general of a "partnership," there is no evidence that Wright was then told of the bill of sale, but also that the father, in executing the instrument of December 8, did not consider the bill of sale effective. We do not think he intentionally misrepresented to the finance company that he was the owner, but that he, with good reason, considered himself such, and considered, as did the finance company, that the effective transfer was that of December 8. His testimony before the Texas court was that Wright required the partnership agreement to be reduced to writing. We think they both considered the "partnership" was formed December 8. This is in accord with the income tax return for 1940, stating that the partnership started on January 1, 1940—as the document of December 8 had provided. Also, the letterhead used in making up the return for 1941 including Fannie Culbertson as one of the "equal owners" in W. O. Culbertson and Sons, indicates to us that the father was dividing up the family holdings at his will. Such action is not consistent on the record before us, with rights vested in the boys, or so considered

by them. Moreover, the bill of sale to the boys, if of any effect, was, in our view, a gift, similar to gifts of "partnership" capital in various cases. It does not, moreover, prove a partnership. The partnership relied upon must rely, under the petitioner's theory that it originated about November 4, on mere oral conversations, not shown to have been participated in by all parties concerned. We think that, as required by the finance company, this "partnership" was put in writing later—on December 8, but subject to such conditions that it does not constitute such for Federal income tax purposes. That instrument recognized expressly that provision was to be made for the boys to establish them in business "as and when they arrive at a proper age to engage in business"—and to induce them "after they reach such state of maturity to contribute their time and services." This is in sharp contrast with the present contention of a then pre-existing partnership. We are not impressed with the idea that W. O. Culbertson did not intend the language of that instrument. He intended to borrow money by means of it. It was read to him and he understood it. We think it represented the facts.

We also think it is important that W. O. Culbertson and Sons did not carry capital accounts for the alleged partners on the books, and that the amounts of any withdrawals or financial participation by the sons are not shown to any appreciable extent. In this respect the instruments, signed by petitioner and his wife, dated December 8, 1939, and December 31, 1940, take an added significance. By these instruments it appears that the boys (and daughter) are to acquire an interest in the business *in the* future, and we can not pass them off lightly, as does petitioner on brief. Moreover, the fact that at the time of trial the boys were not, with the exception of W. O., Jr., (and perhaps Richard—"Richard has some lately"), taking part in the operation of the ranch, is hardly con-

sistent with the petitioner's contention or the idea that Coon thought Culbertson could operate the business.

Though the petitioner urges that many cattle businesses are composed of fathers and sons, and that the nature of the industry so requires, we think the same is probably equally true of other industries where men wish to take children into business with them. Nevertheless, we think that fact does not override the many decisions to the general effect that partners must contribute capital originating with them, or vital services. See *Scherf v. Commissioner*, ... Fed. (2d) ... (May 16, 1947), where it is held that (though adult) "neither of the sons furnished or expected to furnish to the business any new capital or skill, or any new or substantial service"—a statement very applicable here, to a different industry and facts. Again, applying a statement from *Wilson v. Commissioner*, ... Fed. (2d) .... (May 1, 1947), we think here "The conduct, control and management of the partnership business went on just as it did before the transfer." The father continued very largely to manage the finances, sales and purchases, W. O., Jr., continued to work on a salary as before, and the other boys contributed nothing of substance to the business.

Considering the treatment accorded the alleged partnership claimed formed on November 4, 1939, by the father, the fact of family relationship, and the borrowing of funds upon the later instrument, and all of the facts before us, we are of the opinion and hold that the alleged oral partnership did not constitute the parties partners for Federal income tax purposes.

Petitioner argues in the alternative that if the partnership of W. O. Culbertson and Sons is not recognized for tax purposes, the income from the cattle should be taxed to the owners thereof according to their interest. In support of his argument, he relies on *Francis A. Parker*,

6 T. C. 979; *Felix Zukaitis*, 3 T. C. 814; *Estate of Frank G. Ennis, Sr.*, 5 T. C. 1103; *Montgomery v. Thomas*, (C. C. A. 5) 146 Fed. (2d) 76. It is true that each of these cases holds that the income was to be taxed in proportion to the ownership in the different organizations, but in each case it was first decided that there was a bona fide partnership and only because of that fact was the income taxed to the respective partners. The above cases involve income from a business. *Warren MacPherson*, 19 B. T. A. 651, also cited, does not, in our opinion, support petitioner's view, for therein we think it clear there was partnership for Federal tax purposes. Another case relied on by petitioner is *Allen, Collector v. Beazley*, (C. C. A. 5) 157 Fed. (2d) 970, involving income from the holding of securities. In the *Beazley* case, the securities were taken in the name of the taxpayer only, and it was contended that the income therefrom was taxable equally between the family members because of their respective ownership in the securities. This case is distinguishable from the instant case in that it is based on its particular facts, that of holding property (securities) and distributing the income to the owners thereof, while the instant case is one which deals with the distributing of income of a business. There has been no showing in the instant case that the income is the result of mere holding the cattle (or property) but rather it appears that the ranching business involves a much more involved process than that in the *Beazley* case.

We have considered this identical question in such cases as *Albert Nelson*, 6 T. C. 764, and *Robert E. Werner*, 7 T. C. 39. The following language appears in the latter case:

> In the instant case, we think it is sufficiently clear that petitioner's wife merely held a bare legal title to Tri-State's tangible assets. We think it is equally

clear that the income involved was not derived from mere ownership. Wilma Werner, though the title holder, did not engage in the business which created the income. * * *

We follow the *Nelson* and *Werner* cases as to this point as it is our view that the income was created by the use of the assets of the business in connection with the ability and organization of petitioner. The bare legal title to the assets is not the essential element in the production of the income. The evidence before us of the necessity for business management and care in the raising of fine Hereford cattle will not permit a conclusion that income is derived merely from ownership of the cattle. "Constant care" was required, "proper brood blood lines" are necessary, and understanding of "outcrops and the types of breeding" are essential. Mere ownership will not work such results.

As to the partnership question, we therefore hold for the respondent. Under stipulation, credit for two dependents is to be allowed the petitioner.

Decision will be entered under Rule 50.

(Seal)

Enter: Entered Jun. 24, 1947.

97 DECISION.

The Tax Court of the United States,
Washington.

(Seal)

William O. Culbertson, Sr., Petitioner,
v. Docket No. 4184
Commissioner of Internal Revenue, Respondent.

Pursuant to the Memorandum Findings of Fact and Opinion of the Court, entered June 24, 1947, the respondent on July 23, 1947, filed a computation of tax, and on July 28, 1947, the petitioner filed a computation in agreement with that of respondent. In accordance therewith, it is

Ordered and Decided: That there are deficiencies in income taxes for the calendar years 1940 and 1941 in the respective amounts of $429.58 and $8,756.34.

Enter: Entered Aug. 6, 1947.

(Signed) JOHN W. KERN,
(Seal) Judge.

98 DECISION.

The Tax Court of the United States,
Washington.

(Seal)

Gladys Culbertson, Petitioner,
v. Docket No. 4185.
Commissioner of Internal Revenue, Respondent.

Pursuant to the Memorandum Findings of Fact and Opinion of the Court, entered June 24, 1947, the respondent on July 23, 1947, filed a computation of tax, and on July 28, 1947, the petitioner filed a computation in agreement with that of respondent. In accordance therewith, it is

Ordered And Decided: That there are deficiencies in income taxes for the calendar years 1940 and 1941 in the respective amounts of $429.58 and $8,756.34.

Enter: Entered Aug. 6, 1947.
(Signed) JOHN W. KERN,
(Seal) Judge.

STIPULATION FOR CONSOLIDATION ON PETITION FOR REVIEW.

99 Filed Oct. 16, 1947.

William O. Culbertson, Sr., Petitioner,
vs. Docket No. 4184.
Commissioner of Internal Revenue, Respondent.

Gladys O. Culbertson, Petitioner,
vs. Docket No. 4185.
Commissioner of Internal Revenue, Respondent.

The above named petitioners and the respondent, each acting by and through their respective attorneys of record, hereby stipulate and agree, as follows:

The above styled and numbered causes shall be, and they are hereby, consolidated for the purposes of a review by the United States Circuit Court of Appeals for the Fifth Circuit of the decisions heretofore entered by the Tax Court of the United States in said causes, said review being taken at the instance of the petitioners. In all of the proceedings which the petitioners may take to obtain a review of said decisions, they may proceed as if there were only one cause and join said causes in one petition for review, and present to the United States Circuit Court of Appeals for the Fifth Circuit only one petition for review, and only one record, which record shall embrace all of the pertinent proceedings had in said consolidated causes.

This agreement and stipulation is entered into because said causes were consolidated for hearing and decision before the Tax Court of the United States and because said petitioners are husband and wife, residing in Texas,

and because said causes involve the same transactions and the same evidence and the proceedings in one of said causes is equally applicable to and pertinent to the other, and because said causes were disposed of by the Tax Court of the United States in one opinion.

Executed on behalf of the above named parties by their attorneys of record, this 15th day of October, 1947.

BENJAMIN L. BIRD,
(Benjamin L. Bird)
Y. D. HARRISON, JR.,
(Y. D. Harrison, Jr.)
Attorneys for Petitioners.

909-913 Sinclair Building,
Fort Worth 2, Texas.

CHARLES OLIPHANT, C.A.R.
(Charles Oliphant)
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Washington, D. C.

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR.

Received Oct. 13, 1947.

Filed Oct. 13, 1947.

In the Tax Court of the United States.

William O. Culbe .son, Sr., Petitioner,
vs. Docket No. 4184.
Commissioner of Internal Revenue, Respondent.

Gladys Culbertson, Petitioner,
vs. Docket No. 4185.
Commissioner of Internal Revenue, Respondent.

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Comes now W. O. Culbertson, Sr. and Gladys Culbertson, by their attorney of record, and respectfully show:

I.

Jurisdiction.

W. O. Culbertson, Sr. and Gladys Culbertson are individuals, and husband and wife, residing at Dalhart, Texas. Their Federal income tax returns for 1940 and 1941 were filed with the Collector of Internal Revenue for the Second Collection District of Texas at Dallas, Texas. The place of residence of each petitioner and the office of said Collector were, and are, within the territorial jurisdiction of the United States Circuit Court of Appeals for the Fifth Circuit. The respondent on review is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States.

The Court in which the review of these causes is sought is the United States Circuit Court of Appeals for the Fifth Circuit.

Petitioners file this petition pursuant to the provisions of Section 1141 and 1142 of the Internal Revenue Code and Section 1009 of the Administrative Procedure Act (5 U. S. C. A. Section 1009).

II.

Prior Proceedings.

On December 17, 1943, the Commissioner of Internal Revenue determined a deficiency in Federal income tax against the petitioner, William O. Culbertson, Sr., for the calendar years 1940 and 1941 in the respective amounts of $554.98 and $9,164.34, and against the petitioner, Gladys Culbertson, for the same years in the respective amounts of $437.02 and $8,756.34, and sent by Registered mail a deficiency notice to each of said petitioners in accordance with the applicable provisions of the Internal Revenue Code. Thereafter, each petitioner on review duly and timely filed with the Tax Court of the United States, an appeal from the said determination of the Commissioner of Internal Revenue, contesting the amount of the deficiencies so determined by said Commissioner of Internal Revenue; thereafter, pursuant to leave, said petitioners amended their petitions before the Tax Court of the United States and the Commissioner duly filed his amended answer to said amended petitions in due course. The cases were then consolidated for hearing and tried by the Tax Court of the United States on November 13, 1946, before the Honorable Richard R. Disney at Dallas, Texas, upon the testimony of witnesses and certain Exhibits On June 24, 1947, the Tax Court of the United States,

promulgated its memorandum Findings of Fact and Opinion in the proceedings, pursuant to which decision was entered on August 6, 1947 that the petitioners on review were due deficiencies in income tax for the said years as follows: W. O. Culbertson, Sr., $429.58 and $8,756.34, Gladys Culbertson, $429.58 and $8,756.34.

III.

Nature of Controversy.

In 1902, R. S. Coon began the breeding of pure blood Hereford cattle and it remained one of the engrossing interests of his life thereafter; in 1915, Coon and W. O. Culbertson, Sr. (hereinafter called petitioner) formed the partnership of Coon and Culbertson to carry on a cattle business devoted to the breeding of an outstanding type of registered Hereford. The four sons of petitioner and his wife—W. O., Jr., Richard R., Joe Jack and Eugene Culbertson, who were respectively 24, 22, 18 and 16 years of age on January 1, 1940—grew up on the Coon-Culbertson ranch and all began to do ranching work at around 12 years of age—riding the range, moving and caring for cattle, tattooing, branding, keeping breeding records, participating in round-ups and working as regular cowboys. From the time each was approximately 12 years of age until each went into the Army, his time was devoted to going to school and working on the ranch.

R. S. Coon, who was childless, took a great interest in the Culbertson boys, loaning W. O., Jr. and Richard money to go through Texas A. & M. College, and otherwise evidencing a great interest in their development.

In early 1939, R. S. Coon, because of his age and health, was forced to retire from business activities and Coon and

Culbertson began liquidating the partnership cattle; the partnership cattle were sold down to the foundation brood herd by October, 1939, at which time petitioner offered to purchase Coon's one-half interest in the foundation herd at the general average prices which the partnership had received for cattle theretofore liquidated. R. S. Coon, being very much concerned with the perpetuation by selective breeding of the strain of Herefords which Coon and Culbertson had developed, and considering petitioner too old to accomplish that objective, advised petitioner that he would accept petitioner's offer on the condition that petitioner would in turn sell the Coon one-half interest to the Culbertson boys at the prices petitioner was paying therefor and allow the Culbertson boys to step in Coon's shoes in the partnership. Petitioner discussed this counter-offer with his sons, who agreed to purchase the same. Petitioner offered to and did finance the purchase for his sons, although a day or so later R. S. Coon proposed to W. O. Culbertson, Jr. that he be allowed to finance the purchase. At the suggestion of Coon's nephew and Panhandle agent, Coon and Culbertson executed a bill of sale covering all of the partnership cattle to petitioner on November 4, 1939, and on November 6, 1939, petitioner executed and delivered to the four Culbertson boys a bill of sale to an undivided one-half interest in the cattle, and the four boys executed and delivered to petitioner their joint note in an amount covering the price agreed upon by Coon and petitioner for the half interest, due one year from date with four percent (4%) interest; this sale to the Culbertson boys was not a gift of any sort and the boys understood that the note would have to be repaid. Petitioner and the Culbertson boys, at that time, entered into an oral partnership whereby each contributed his interest in the cattle to the partnership and profits and loss were to be divided accordingly; the name agreed upon was W. O. Culbertson and Sons. This part-

nership was widely publicized, the American Hereford Association issued its certificate to W. O. Culbertson and Sons on November 13, 1939, partnership books were set up as of November 1, 1939, letterheads were prepared, and a bank account opened.

Admittedly, none of the negotiations were motivated by tax considerations nor was the suggestion of taxes mentioned in any way in any of the activities ending in the creation of the partnership. In late November, 1939, petitioner, who had agreed in the formation of the partnership to handle partnership loans, discussed with A. A. Wright, the Manager of National Finance Credit Corporation, a cattle loan company, establishing a line of credit for W. O. Culbertson and Sons; Wright, upon being advised that two of the partners wer minors, suggested that Culbertson get a lawyer to draw up some paper which would authorize petitioner to borrow money and pledge the cattle; petitioner interviewed a Dalhart lawyer and told him of Wright's suggestion, and the lawyer, on his own initiative, drew up a document which petitioners executed on December 8, 1939. This document mentioned the words "limited partrnership" but in reality, purported to be a conveyance from petitioners to the four sons of an undivided one-half interest in the cattle but providing that the petitioners were to have the management of the cattle until the youngest son became 21 years of age. None of the Culbertson boys knew of the existence of this document until the present tax controversy arose in 1943; petitioner considered it merely as a means whereby he would carry out his agreement with the other partners to handle the partnership loans. During 1940 and 1941, up until he entered the Army, W. O. Jr. operated the ranch and the remaining sons worked on the ranch while not attending college or high school; petitioner handled loans, sales and purchases, as agreed. The partner-

ship, out of the Culbertson boys' share, paid petitioner approximately $30,000.00 of the purchase price of the Coon one-half interest and petitioner, as gifts to the boys, canceled the remaining $21,000.00 of their note.

The Commissioner of Internal Revenue, in the aforesaid deficiency notice, held that the partnership of W. O. Culbertson and Sons was not real or recognizable for Federal income tax purposes and taxed all of the partnership net income for the years in question to the petitioner and his wife.

The Board of Tax Appeals upheld this determination and the correctness of this determination is the primary question at issue in this review.

IV.

Assignments of Error.

The Tax Court erred—

1. In holding and deciding that W. O. Culbertson and Sons was not in reality a partnership for income tax purposes, as well as otherwise;

2. In holding and deciding that the Culbertson boys did not contribute to the partnership capital originating with them;

3. In holding and deciding that the Culbertson boys did not contribute valuable services to the partnership;

4. In failing to hold and decide that the document of December 8, 1939 was void and without force or effect in this proceeding;

5. In holding and deciding that the partnership was created by the document of December 8, 1939 rather than by the oral agreement of the partners effected at the time the Culbertson boys purchased the one-half interest in the cattle;

6. In holding and deciding that the 1940 and 1941 income from the cattle should not be taxed to petitioners and the Culbertson boys, the undisputed owners of such cattle, according to their individual interests in the cattle producing such income;

7. In that its opinion and decision are contrary to the uncontroverted evidence in this proceeding;

8. In that its opinion and decision in this proceeding are contrary to law.

Wherefore, petitioners petition that the decision of the Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Fifth Circuit, that a transcript of the record be prepared in accordance with law and the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

BENJAMIN L. BIRD,
(Benjamin L. Bird)
Attorney for Petitioner.

Of Counsel:
WEEKS, BIRD, CANNON & APPLEMAN.

909-913 Sinclair Building,
Fort Worth 2, Texas.

Dated this 13th day of October, 1947.

BENJAMIN L. BIRD,
(Benjamin L. Bird)
Attorney for Petitioners on Review.

909-913 Sinclair Building,
Fort Worth 2, Texas.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error, mentioned therein is hereby acknowledged this 13th day of October, 1947.

CHARLES OLIPHANT, OWL
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent on Review.

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111 STATEMENT OF THE EVIDENCE.

Lodged Nov. 21, 1947.

Filed Dec. 22, 1947.

In the United States Circuit Court of Appeals for the Fifth Circuit.

W. O. Culbertson, Sr., Petitioner on Review,
vs. Docket No. 4184.
George J. Schoenemin, Commissioner of Internal Revenue, Respondent on Review.

Gladys Culbertson, Petitioner on Review,
vs. Docket No. 4185.
George J. Schoenemin, Commissioner of Interal Revenue, Respondent on Review.

The following is a statement in narrative form of the evidence in the above styled cause. The proceeedings

came on for hearing on November 12, 1946, before the Honorable Richard L. Disney, Judge of the Tax Court of the United States, at Dallas, Texas. Benjamin L. Bird, Esquire and Y. D. Harrison, Jr., Esquire appeared on behalf of the taxpayers and J. Marvin Kelley, Esquire appeared on behalf of the Commissioner of Internal Revenue.

On motion of attorney for the petitioners, the two causes were consolidated for the hearing.

After opening statements by counsel for the respective parties the following testimony was offered and received in evidence:

WALTER WILLIAMS, being first duly sworn, testified as a witness on behalf of the taxpayers, as follows:

112 Direct Examination

My name is Walter Williams and I have been a cattleman, living in Houston, practically all of my life. I have known R. S. Coon, who was generally called Uncle Dick, for fifty years; Uncle Dick had different businesses, he owned real estate and cattle. He was a member of a cattle partnership called Coon and Culbertson which operated around Dalhart County in the Northern end of the Panhandle of Texas.

In 1939, Mr. Coon, who was around eighty and childless, determined to retire from business activities due to ill health and his age. He had been in the Coon and Culbertson partnership for over twenty years.

I frequently went around the country with Mr. Coon on account of his age and in October, 1939, I was with him in Dalhart where he was attending to the dissolution

before December 8, 1939, the date of the document about which I was cross-examined. The conversation occurred after October 23 and before December 8.

Examination by the Court.

In stating what my central idea, my main idea, in sugeting father and sons partnerships was, I will have to go back in my own experience. I was born and raised on the ranch and have been in the livestock business all my life. Through experience, I have learned that a man has to get a liking for the livestock business as a child; such has been my experience; as a consequence, where a man has a son and wants to make a ranch man out of him, we have encouraged him to go in partners with his son as an incentive to keep that son on the ranch.

Re-Direct Examination.

In this machine age, there has been a trend of young men leaving ranches and going to urban employment. My policy in recommending the formation of father and son partnerships was caused by the fact that a boy had to have some inducement or incentive to stay out on a ranch or farm. He could not stay out there if he is ambitious and wants to do something for himself, and he will not stay out there if he can't have an interest or be permitted to acquire an interest.

125 WILLIAM OLIVER CULBERTSON, JR., called as a witness on behalf of petitioners, being duly sworn, testified, as follows:

My name is William Oliver Culbertson, Jr.; I live close to the little town of Bueyeros, New Mexico on the ranch.

State of Texas,
County of Tarrant.

Benjamin L. Bird, being duly sworn, says that he is the attorney of record for W. O. Culbertson, Sr. and Gladys Culbertson, petitioners in the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge, except as to matters therein alleged upon information and belief and as to those matters, he believes them to be true.

BENJAMIN L. BIRD
(Benjamin L. Bird)

Subscribed and sworn to before me, this 10th day of October, 1947.

(Seal)

NORMA FLENNIKEN,
(Norma Flenniken)
Notary Public in and for
Tarrant County, Texas.

My business is ranching. W. O. Culbertson is my father. I was born on a ranch near Tucumcari, New Mexico. My father was in the partnership of Coon and Culbertson; I worked for that partnership. I have lived on a ranch practically all of my life but I drew my first check from that partnership when I was twelve years old. That was for moving some cattle from Dalhart to Moore County. We pastured cattle on a place Mr. Coon had leased. Up until now, I have never worked at anything other than cattle ranching, except the period I spent in the Army. Except during the time I was in school or in the Army, I have devoted all of my time to working on a ranch. Up until 1939, that ranch was used by Coon and Culbertson; since then, it has been used by W. O. Culbertson and Sons. I performed my first services for Coon and Culbertson at the age of twelve. I was born in 1915. From the time I began working for them, I worked about three months out of the years, and on week-ends, and any other chance I had to go out to the ranch. When I began working on the ranch at twelve years of age, I was riding and looking after cattle and as I grew older, I began to take over such jobs as tattooing, taking care of all breeding stock, making out registration papers and any other kind of work that pertained to the commercial herd or registered herd. The commercial herd consists of pure bred cows which are not registered. However, all Coon and Culbertson cattle were registered up until the last years of that company. The registered herd consisted of pure bred Hereford cattle that we carried registrations on. The American Hereford Association issues the registrations. That is the source of registrations of all pure bred Herefords in the Untied States. Tattooing is the method we have of marking each calf. We give each calf a number on our records, knowing the dam and the sire and this mark keeps the records straight and helps us in making out registration applications. Tattooing a number

NOTICE OF FILING PETITION ON REVIEW

109 Filed Oct. 14, 1947.

United States Circuit Court of Appeals for the Fifth Circuit.

W. O. Culbertson, Sr., Petitioner on Review,
vs. Docket No. 4184.
George J. Schoenemin, Commissioner of Internal Revenue, Respondent on Review.

Gladys Culbertson, Petitioner on Review,
vs. Docket No. 4185.
George J. Schoenemin, Commissioner of Internal Revenue, Respondent on Review.

To:

Charles Oliphant, Esquire,
Chief Counsel, Bureau of Internal Revenue,
Internal Revenue Building,
Washington, D. C.,
Attorney for Respondent on Review.

You are hereby notified that W. O. Culbertson, Sr. and Gladys Culbertson did on the 13th day of October, 1947, file with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Fifth Circuit, of the decision of the Tax Court of the United States heretofore rendered in the above styled cause. A copy of the petition for review, as filed, is hereto attached and served upon you.

of Coon and Culbertson. I had been with him to Dalhart many times previously and I was acquainted with Mr. Culbertson, the other partner in Coon and Culbertson and with the Culbertson family. Mr. Coon was well acquainted with Mr. Culbertson's four sons.

At this point the Court sustained an objection to a question concerning Mr. Coon's opinion of the Culbertson boys as cattlemen.

Coon and Culbertson had been breeding exceptional Herefords; Mr. Coon had had Hereford cattle before Coon and Culbertson was organized; Hereford breeding was a matter of great concern to Mr. Coon. Between the years 1932 and 1939, I was up there different times during that time and during the vacation time all of the Culbertson boys were out on the ranch and W. O., the oldest one, was practically in charge of the ranch. During those times the partnership must have had five or six thousand head of cattle.

The partnership of Coon and Culbertson was dissolved in 1939. They began to liquidate the cattle along in the spring and they had got down to where they had, I judge, between fifteen-hundred and two thousand left and Mr. Coon was very concerned about what would be done with these pure bred cattle; they were registered. He told me in October that he had a proposition from Mr. Culbertson to buy about fourteen-hundred head. I was present when Mr. Coon had the transaction with Mr. Culbertson resulting in the sale of his interest in the partnership. On the last day of October, 1939, I believe, we had dinner and went to the Coon and Culbertson office in Dalhart where Mr. Culbertson and Mr. Coon talked; I was just a bystander. But I was present when that transaction was completed. Mr. Coon remarked to Mr. Culbertson that he was going to accept Culbertson's proposition provided

the latter would sell his half-interest to the Culbertson boys; that is, that Mr. Coon would sell his half-interest to Mr. Culbertson provided Culbertson, in turn, sold the half-interest to his sons at the same price Coon was charging; Dick had stated in the beginning that Culbertson was offering him for his one-half interest in the cream-of-the-crop, the price at which the whole herd averaged in the prior sales. In that conversation, nothing more was said about a partnership than what I have just stated.

I am not related in any way to Mr. Culbertson or any of his family and I have never been associated in business with him or his family.

Cross Examination.

I have been a lifetime friend of Mr. Coon and Mr. Culbertson; I would probably make a trip out to Dalhart four or five times a year from 1932 to 1939; I saw the Culbertson boys every time I was up there. Mostly these trips were in the summertime and the boys were on the ranch. Eugene might not have been able to do much work on the ranch, but he was there; most farmer's boys are on the farms between schools.

At the time of the conversation in the partnership office at Dalhart, Mr. Coon told Mr. Culbertson that he would sell his one-half interest in the partnership property if Culbertson would sell it to his four boys at the same price.

114 W. H. COON, called as a witness on behalf of the petitioners, having first been sworn, testified as follows:

My name is W. H. Coon; I live at Dalhart, Texas. I am not related in any way to W. O. Culbertson or any

of his family, nor associated in business with him. I am Uncle Dick Coon's nephew and assisted in the management of his Panhandle properties, rental properties, real estate and ranches. I acted under written power-of-attorney. I was his attorney-in-fact starting about 1926 and continued until his death, until 1941. Mr. Coon was in the cattle business prior to 1915, but from 1915 until the end of 1939, Coon and Culbertson were partners engaging in the production of pure bred registered Herefords. They had a very large herd of good quality, uniform bred Herefords, which were unusual. Mr. Coon had started the breeding of that herd of Herefords in about 1902. Breeding Herefords was his hobby and he enjoyed it.

From 1932 until 1939, I was acquainted with the Culbertson boys—W. O., Jr., Richard, Joe Jack and Eugene Culbertson. From 1932 to 1939, those four boys spent all of the time they were not in school working on the Coon and Culbertson ranch—that is, week-ends and summer vacations. They did all of the kinds of work on the ranch that boys of their age could do—riding horses, helping drive the cattle, tattooing, branding and observing. The youngest boy, Eugene, was around eight years of age in 1932. When he became a little older, I have seen him tattooing calves.

Prior to Mr. Coon's death in 1941, Coon and Culbertson was dissolved because of Uncle Dick's health and the fact that he was seventy-nine in 1939. Liquidation of the partnership assets started in the first part of 1939. Mr. Culbertson purchased what I would call the brood or foundation herd, the best age cattle, the remnants after the other cattle had been sold. Culbertson did not buy commercial cattle, but the best, the pure bred stuff. This sale occurred in October, 1939. I was present at the discussions between Mr. Coon and Mr. Culbertson leading up to this sale. This conversation occurred in the Coon-Cul-

bertson office one night; Mr. Culbertson, Mr. Coon, Mr. Williams and myself were present. We were there two or three hours as I remember. Mr. Coon discussed this herd; the ups and downs we had been through, the drouth, what a wonderful herd it was, and what luck we had had in liquidating and cleaning up. We had went through some pretty tough periods. Mr. Coon wanted the herd to go on and he knew Mr. Culbertson did too. I don't remember his exact words in that connection but Mr. Culbertson had made him an offer on these cattle that would clean him up and I recall that Mr. Coon didn't think that Mr. Culbertson could carry that herd on by himself, due to his age. Mr. Coon told Mr. Culbertson, "You can go on with it with the assistance of your boys" and he said, "I will accept your proposition. I will sell you my interest in these cattle if they can take my place, if you will sell it to them, just like I sell it to you, and continue on with this herd of cattle, providing they want to do it." Mr. Coon added, "W. H. (meaning me) here will close the deal with you." Mr. Culbertson said, "I will discuss it with the boys. I am sure they will." In accepting Mr. Culbertson's proposition, he stated that he was willing to accept it if the Culbertson boys would step into his place, that is what he meant by saying that he would sell to Mr. Culbertson if Culbertson, in turn, sell to the boys so that they would take his place. I don't recall that right at that time anything was said about the price which Mr. Culbertson was to pay, but definitely the condition was that the Culbertson boys were to pay Culbertson the same price which Mr. Coon was selling for. That sale was carried out. We knew approximately how many of the brood cattle would come under this sale. Ten days or so later, the first part of November, we tallied the cattle and I gave Mr. Culbertson a bill of sale covering the cattle.

Thereupon, Petitioner's Exhibit No. 1, being a bill of sale from Coon and Culbertson, signed by R. S. Coon and W. O. Culbertson, to W. O. Culbertson was introduced and admitted in evidence.

The date of that bill of sale was the same date as the check, November 4. After Coon and Culbertson executed and delivered to W. O. Culbertson the foregoing bill of sale, Mr. Culbertson executed and delivered to the four Culbertson boys a bill of sale to an undivided one-half of the same cattle described in Petitioner's Exhibit No. 1.

I was present when the bill of sale from Mr. Culbertson to the four sons was prepared and I witnessed it. That bill of sale was delivered to the four boys on November 6, 1939, and I was present when it was delivered.

Petitioner's Exhibit No. 2, a bill of sale from W. O. Culbertson to W. O., Jr., Richard, Joe Jack and Eugene Culbertson, covering an undivided one-half interest in the cattle, was thereupon offered and admitted in evidence.

The reason that the sale took the form of a transfer from Coon and Culbertson, with another transfer from Culbertson to the boys, was because the cattle were owned by Coon and Culbertson and our partnership books were set up that way; I suggested that the transaction be handed in that manner.

After the bill of sale to Mr. Culbertson was delivered, he paid $99,440.00 for the cattle. At the time Mr. Culbertson delivered the bill of sale to his four sons, Petitioner's Exhibit 2, I understand that the four Culbertson boys gave Culbertson a note for the purchase price of their half-interest.

Later, Uncle Dick Coon inquired of me as to whether Mr. Culbertson had actually conveyed a half-interest in

these cattle to the boys. It was my impression that on delivery a partnership between Mr. Culbertson and his four son was formed; I interpreted it as a partnership; they were the owners. The existence of a partnership between Mr. Culbertson and his sons was widely publicized in and around Dalhart and in the Hereford business. This page from a newspaper is an announcement of the dissolution of the Coon and Culbertson Ranch, giving the history of the ranch and telling of the sale to Culbertson and Sons. This is a news item in the local paper, the Dalhart Texan, which appeared on December 2, 1939. Thereupon Petitioner's Exhibit No. 3, being the newspaper announcement mentioned, was offered and admitted in evidence as proof of the publicity given to the transaction.

The registration of these pure blood Herefords was changed by the issuance of a new certificate to Culbertson and Sons; this certificate was issued by the American Hereford Association, Kansas City, which is the registry, or the central point at which all fine Herefords in the United States are registered.

At about the time of these sales, Mr. Culbertson asked me to assist him in establishing a new line of credit for Culbertson and Sons with the National Finance Credit Corporation. I then wrote to A. A. Wright, head of the National Finance Credit Corporation, explaining our sale; that concern is one of the leading cattle loan companies in the State of Texas. I wrote the letter at Mr. Culbertson's request. Such letter, dated October 23, 1939, from W. H. Coon, to A. A. Wright, National Credit Finance Corporation, Fort Worth, was offered and admitted in evidence as Petitioner's Exhibit 4. During 1940 and 1941, I was out to the Culbertson ranch, where this herd of cattle was being handled, possibly three times. I am familiar with the work on the ranch which the four boys were doing. When I was out there during 1940 and 1941,

W. O. Jr. was managing the ranch and the other boys were there working.

"(By Mr. Bird):

"Q. Mr. Coon, in order to clarify a point which Mr. Kelley just made, in the conversation betwen R. S. Coon and Mr. Culbertson on the night which the deal was made in Dalhart on October 1939, did Mr. Coon, in accepting Mr. Culbertson's proposal, say anything about the four boys working—becoming partners with their father?

"A. That was the intention.

"Q. What did he say?

"The Court:

"Strike the answer: I don't care to hear any statement of somebody's intention. Tell me what he said.

"The Witness:

"I thought I covered it. He brought out that Mr. Culbertson couldn't go on, or in his opinion he couldn't go on. He so expressed that by himself, and he wanted this herd to continue. It was a lifetime work. He wanted Mr. Culbertson, he was selling to Mr. Culbertson on the condition that Mr. Culbertson sell it to his boys at the same price. Does that answer it?

"(By Mr. Bird):

"Q. Was anything said about the formation of a partnership between Mr. Culbertson and his sons?

"A. He used the expression 'continuing in my shoes just like we have, Bill'."

After the bills of sale dated November 4 and November 6, Mr. Coon repurchased about four-hundred head of the cattle; W. O. Culbertson and Sons purchased the Coon

and Culbertson grass leases, the horses and the ranching equipment subsequent to the execution of these bills of sale.

Cross Examination.

The execution of the bill of sale from Coon and Culbertson to W. O. Culbertson took place in their Dalhart office; Mr. Culbertson, R. S. Coon and myself were present when this bill of sale was executed and delivered; Mr. McClinton, a cattle inspector, witnessed one of them. Mr. Robinson is our bookkeeper. I was a witness to the bill of sale from W. O. Culbertson and Gladys Culbertson to the four Culbertson boys, conveying the one-half interest in the cattle. I was present at the time, but I don't recall who else was present. W. O. Culbertson, Jr. was present at the time this last bill of sale was delivered to the boys; he is the only one I remember talking to about it at that time; the other boys might have been at the ranch or in town; W. O. Culbertson, Jr. was pretty happy about the transaction; I shook hands with him and congratulated him. Mr. Culbertson and the boys took the bill of sale and while I know the deal had been made, I don't know what was done with the bill of sale.

I was out at the ranch two or three times in 1940 and 1941 trying to buy some calves. In the summer of 1940, I saw W. O., Jr. who was then foreman, having charge of the ranch. W. O., Jr. was boss but a boy named Ed McMahon was working. I don't recall who else was there. During the year I have seen all of the boys there at one time or another; I possibly saw Richard there in 1940 but I can't recall about 1941. I don't know whether I saw Joe Jack out there or not.

Re-Direct Examination.

During all of the transactions which I overheard with respect to the sale between Mr. Coon and Mr. Culbertson and with respect to the bill of sale from Mr. Culbertson to the Culbertson boys and in all the talks between Mr. Coon, Mr. Williams, Mr. Culbertson and W. O. Culbertson, Jr., there was never any mention made whatsoever of the word "taxes". No one mentioned that anything they were doing might have any bearing on any sort of taxes.

Examination by the Court.

The four Culbertson boys lived on the ranch when they were not in school; their home was on the ranch; Mr. Culbertson had a home in town which he and his wife used, but the boys stayed with the ranch. When the boys were small and were in school, they went out to the ranch, for summer vacations.

120 A. A. WRIGHT, called as a witness on behalf of the petitioners, after being duly sworn, testified as follows:

My name is A. A. Wright and I have lived in Fort Worth since 1930. Since 1930 I have been manager of the National Finance Credit Corporation of Texas; the business of this corporation is loaning money on cattle, sheep and goats and as manager, my duties are to pass on loans and manage the business.

Prior to 1939, we were carrying to Coon and Culbertson partnership loans. These loans were practically paid off. I was familiar with the dissolution of the Coon and Culbertson partnership and I think that their loan was

practically retired at the time of the dissolution. I was advised of the formation of a partnership called W. O. Culbertson and Sons. My first notice of the organization of W. O. Culbertson and Sons was upon receipt of Exhibit 4, a letter from Mr. W. H. Coon to me, or at the time Mr. Culbertson called on me and advised me of formation of such partnership. After October 23, 1939, the date of Exhibit 4, I had a conversation with W. O. Culbertson concerning a line of credit. Mr. Culbertson came in to discuss borrowing funds for W. O. Culbertson and Sons and explained to me the partnership transaction; as there were some minors in the deal, I told him he would have to prepare some kind of document whereby he could qualify authorizing him to sign for the minors. I told him he would have to prepare it. I presume he followed my advice because we later received a document which we turned over to our attorney and the attorney stated that the document served our purpose. At the time Mr. Culbertson talked to me, I do not know whether he had any sort of written partnership agreement between himself and his sons.

I have been in the cattle loan business since 1930 and during that time National Finance has loaned a little over three-hundred million dollars; it now has outstanding about five and a half million. In my capacity as manager of National Finance, I occupy a confidential relationship with cattlemen who borrow money from the company. They frequently discuss their plans and problems with me. The proposition of forming father and sons cattle partnerships arises frequently in the cattle business and it has arisen frequently in my experience. I have adopted a policy, with respect to inquiries from present or prospective borrowers, in discussing what they should do with their children; in discussing a loan we often talk with cattlemen of what procedure concerning carrying on the business, should be followed in case the cattlemen be-

came incapacitated; if he has any children and they have prospects of becoming cattlemen, we encourage his taking those children into a partnership. We feel that it strengthens the deal. In the majority of such instances, the children in those situations do not have any funds. Where the son does not have any capital, I have recommended and suggested to the father that he take his notes, or make him a gift or adopt different means that meet the requirements of a partnership. From our viewpoint, the creation of such a father and son partnership gives better security for the loan; also it gets someone else interested in the deal and as we contemplate that a loan, especially if it is a breeding loan, will be carried over a good many years, we are naturally interested in how the operation is going to be followed out before the loan is eventually retired. The cattle business is a lifetime proposition. While I know some exceptions, the general rule is that successful cattlemen are born and raised on ranches.

A check of our records indicates that about ten percent of our loans are made to partnerships consisting of fathers and sons or fathers and sons-in-law. These loans are made in the name of so and so and sons. Where the name of a father and son partnership is the so and so cattle company, we do not know usually whether it is a father and son partnership or not. The formation of father and sons or father and sons-in-law partnerships are a very usual thing in the cattle business.

Cross Examination.

Mr. Culbertson came to see me about obtaining a line of credit some time in the fall of 1939.

"Q. What was that conversation, Mr. Wright?

"A. Well, that he was forming a partnership with his sons to take over his interest of the Coon and Culbertson

Cattle and he wanted to obtain a loan, pay his part of the partnership, whatever you want to call it.

"Q. Did he say—did you ask him if if was a written partnership agreement?

"A. I didn't go into that.

"Q. Well, did you suggest the type of document to be prepared?

"A. I did not suggest anything except I asked him the ages of his sons and ascertained some were minors and I told him in case we handled a loan, we wanted him to have authority to sign for these minors. Beyond that we weren't interested in the document."

A few days later he sent the document to me; I showed it to our attorney; he said we could accept it. On the basis of that document of December 8, we extended a line of credit to the firm of Culbertson and Sons; we have been carrying it ever since. Since that time, Mr. Culbertson has not advised me that that document was null and void. I do not recall whether he told me that he filed a petition in the District Court of Dallas County, to have the document declared null and void. I do not know that a District Court of Texas has declared that document null and void. He didn't tell me of these things. My company has relied on it as being authentic. That document purported to create a partnership. I do not know what it purported to create; all we were interested in was qualifying him to sign W. O. Culbertson and Sons. Since that date, it has been in my office and I have relied on it as a basis for this line of credit.

Re-Direct Examination.

I couldn't say whether Mr. Culbertson was in my office and talked to me in 1939 before or after I received Exhibit 4, which is dated October 23. I know that it was

in the ear is our method of identifying a particular calf. We know the dam and the sire of a particular calf because we run only one herd sire with a particular group of cows in a certain pasture; we have a list of all tattoo numbers of all cows in this pasture and we have one certain herd sire with these cows. We keep a record of the cows and bulls in any one pasture.

Prior to 1939, I was not acting as foreman of the Coon and Culbertson ranch. I finished high school in 1933; after that I stayed on the ranch for a year until I was financially able to start to A. & M. College the following year. I was not financially able to go to college; at that time I had no source of revenue that would put me through school. Mr. R. S. Coon helped me go through college; he promised to and did loan me money to go to school. I entered A. & M. in the fall of 1934, taking an animal husbandry course at the suggestion of Mr. Coon and because I thought it the best course to help me along in ranching and later years. Mr. Coon recommended that course. I got out of A. & M. in 1938, went to the ranch and took over as foreman. In 1939, the partnership of Coon and Culbertson was dissolved. I first heard of the proposed dissolution in the summer of 1939. I was foreman at the time I heard about the dissolution. Along in the late summer of 1939, I attempted to buy, on behalf of myself and my brothers, some of the Coon and Culbertson cattle. At that time we were raising Bradford cattle, a cross between the Brahma and Hereford for South Texas trade. We had carried these cattle for a number of generations and Coon and Culbertson had them up for sale in the summer of 1939. With the experience that us boys had had, I hated to see them go as we had a market for them. So I approached Mr. Coon with the idea of us boys buying this particular herd of cattle and I also spoke to my father about financing the herd for us and he said we could handle it. So we made a trade

with Mr. Coon whereby my brothers and myself took the Brafords, about 350 some odd head. As part owner of Coon and Culbertson, my father had an interest in that herd. The trade was between Mr. Coon and my father and us boys; I talked to both. My three brothers and myself bought those cattle but we did not pay for them or receive delivery because at about that time, a friend of Mr. Coon's and ours from South Texas asked Mr. Coon if he couldn't buy these Brafords; Mr. Coon informed him that he had already traded with me and my brothers on these cattle and that it was too late; he told the friend that he might talk us boys into selling the cattle to the friend at a profit but that it would be up to the boys to decide. We very seldom crossed Mr. Coon because he was a great friend of ours and if he wanted to sell these cattle to a certain person and we were getting a profit out of it, we saw no reason why the friend, Mr. East, couldn't have them. At the same time, Mr. Williams suggested that we sell these cattle and later try to get some Hereford cattle. We sold the Brafords to Mr. East at a profit of $5.00 a head; Coon and Culbertson made delivery to Mr. East.

I have outlined for the Court my personal experience as I grew up from a boy in the cattle business. The experiences of my three brothers, Richard, Joe Jack and Eugene have been practically identical with mine. Their services on the ranch up to 1939 were similar to mine in the fact that they did practically the same kind of work from a technical standpoint. Richard went to work on the ranch at about twelve years of age and that is true with respect to Joe Jack and Eugene. Their services were similar to mine. Each of my brothers graduated from high school; Richard finished A. & M.; Joe Jack is due to finish the last term shortly; he had to drop out due to the war. Eugene is going to a business college in Amarillo.

After the middle of October, 1939, my father discussed with me the formation of a partnership between him, my three brothers and myself. Dad came out to the ranch one day and told me that Uncle Dick had said he wanted my brothers and myself to own his interest in the Coon and Culbertson herd and dad asked what we thought about it. I don't think my two brothers were present at that time but they were that night. It had been my idea all along to some time or other I'd get a start from that particular herd and I thought very well of Uncle Dick's suggestion. That evening when we saw the other boys, we talked it over. Of course, the other boys were of the same opinion as myself; questions arose about financing the acquisition of Uncle Dick's interest and what we would name the ranch. A deal like that was a pretty big thing for these boys and financing the purchase was the first thing we thought of. I asked my dad how we would go about financing it and he said he could help us out and finance it for us. I don't recall exactly the price my three brothers and I were to pay for the interest in these cattle, but it was the same price at which my dad and Mr. Coon had settled on. I think it was $60.00 a head for the cows. My brothers and I were buying an undivided one-half interest in the entire herd—an eighth for each one of the four boys. We discussed the possibilities of a number of names for the organization. We talked about calling it the Culbertson Cattle Company; Culbertson Land and Cattle Company, but as we didn't have any land, we immediately discarded that. We finally decided on W. O. Culbertson and Sons due to the fact I had heard of other ranches called so and so and son. We have a neighbor, T. E. Mitchell and Son and his ranch has ben going along for fifty years. We finally decided that would be a good name since all of the boys were in the partnership. The group of cattle described in Petitioner's Exhibit No. 2—the bill of sale from W. O.

Culbertson and Gladys Culbetrson to me and my three brothers—were the cattle involved in the conversation I have testified we had with my father; there was a little change in these cattle; a little later on some cattle were overlooked, but these were generally the cattle we had in mind. Referring to a check dated November 4, 1939, in the amount of $99,440 which my father gave to Coon and Culbertson for the purchase, me and my three brothers agreed to pay my father half of that amount, about $49,700. The first time I ever saw Petitioner's Exhibit No. 2, the bill of sale, was one evening during the first part of November in the office; the bill of sale is dated the sixth of November. Mr. Coon, Mr. Culbertson, our bookkeper, W. R. Robinson and I were in the office; I think H. Coon was there. In the office, at that time, the bookkeeper made out his bill of sale and my dad signed it and H. Coon, who carried on Mr. Coon's business—signed for Mr. Coon; my mother wasn't there at that time but she was to sign the bill of sale. My dad took the bill of sale down to her, as I recall, and they later brought it back to the office and handed it to me. We made a few remarks about it and of course it looked good to me. I handed it to the bookkeeper and told him to file it. The next day, my brothers and I made a note for our payment of the bill of sale; this note was for $49,000. I do not have the note but as I recall it, it was for four percent and due a year from date. That note was signed by my three brothers and myself. It was signed by me and two of my brothers at that time and later by the other brother. This note was turned over to my dad.

(At that point, the Court adjourned until the following day, Wednesday, November 13, 1946 at 10:00 A. M.) at which time—

WILLIAM OLIVER CULBERTSON, JR., having been previously duly sworn resumed the stand and testified, as follows:

130 Direct Examination (Cont'd.).

With respect to the terms of the partnership between me, my three brothers and my father, when W. O. Culbertson and Sons was formed, my three brothers and I were to take a half interest, we bought a half interest in the ranch; my dad retained the other half. In other words, we had an eighth. With respect to profits and loss, all of the profits would be shared alike; we would take the proceeds from this ranch. There was a mutual agreement between my brothers and me to pay our note; it was to be handled as a company, a partnership, and no individual was to have any more right than the other but we'd all have a right to manage the ranch. Personally, I was to have no more interests in profits and losses than any of my brothers. I had an eighth interest and each of my brothers had an eighth interest; my father had a one-half interest. After my conversation with my father at the ranch about the partnership, I saw Mr. R. S. Coon a little while later in Dalhart, at which time we had a talk. I saw him in the hotel one evening and, of course, I wanted to thank him for his interest on behalf of my brothers and me; I had understood from the beginning that it had been his desire that we take a half-interest in this ranch and I wanted to thank him for it. The thing I wanted to thank him for more than anything else was the price we got for the cattle, a good price I thought. It was his intention that we take this herd and go on with it. That herd of cattle had taken several years to build up and he wanted to see us get a good start and he wanted us to take this old herd, you might say, and go on with it. That gave us quite an advantage. There were

several things that came up about our partnership and about the financing. He said, "Now, have you got the thing financed?" "Yes, I think so." He said, "Well, if you run into any diffuclty, I think I can handle it." I told him it wasn't any use as we had already made arrangements with my dad. With reference to his statement that he wanted us to carry on with the herd, I understood that he meant for us to carry on this particular strain of blood in the breeding of Herefords.

My opinion in 1940 and 1941 concerning the essentials of fine Hereford breeding included three phases: one, feeding and care and an understanding of what types of feed to feed certain ages and classes, registered Hereford cattle take constant care; two, it is very essential to have proper blood lines which we had established over a number of years; the maintenance of these blood lines required an understanding of outcrops and the types of breeding you want to get into; last, is the sound breeding program—selective breeding, taking one certain individual and crossing with a number of particular cows with the thought in mind of establishing a standard of perfection. You have to have in mind the type of animal you want to develop. You get as close to the standard of perfection as you can but it is never reached. In 1940 and 1941, I was handling the breeding of the fine Hereford stock that W. O. Culbertson and Sons had on hand, which we had acquired from the partnership. It is hard to describe the standard of perfection which was my ideal. Any master breeder wants a short, compact heavy set low to the ground animal showing quality, breed character and substance. We call it "bone". We have a kind of model in mind we strive to develop. The essentials of ranching, as differentiated from breeding, requires the consideration of lots of things; like any other business, it is more or less divided into phases. You have the maintenance and care of cattle on the ranch, the administration of the

ranch, working with your men when different jobs come up, and keeping up with the water. Then you have the trading end and the financial end; someone has to finance the thing and maintain contacts with cattlemen. At the time the bill of sale was delivered to me and my brothers by my father, no strings were attached to it other than that we owed for our note. My father did not state that there were any conditions attached to the title which my brothers and I were then taking. We had to pay for the note but otherwise our title was clear.

The amount of the note which my brothers and I gave at the time the bill of sale was delivered to me was changed at a later time. (Petitioner's Exhibit No. 6, a note dated January 1, 1940 in the sum of $57,674.80, was identified by the witness as a note given by him and his brothers, payable to W. O. Culbertson and wife, Gladys Culbertson); the signatures on this note were those of Richard Culbertson, Joe Jack Culbertson, Eugene Culbertson and myself.

Said Petitioner's Exhibit No. 6 was then admitted in evidence.

The reason of the change from the $49,000 note to this second note was because this note included some material and a few head of livestock which had not been included in the first note; some grass leases, saddle horses and a few odds and ends had not been included in the first note; the first note was for the foundation herd of cattle and at that time we did not know what we were going to do with the old saddle ponies and they were left out. Later on, it looked like Coon and Culbertson were not going to liquidate some bull calves they had intended to liquidate. These calves were on the ranch and something had to be done with them. We decided to take them and sell them next spring, which we did, and we included that

in the note. We included them in this note but a little later Coon and Culbertson sold these cattle and our note was credited in a like amount.

After the formation of the partnership of W. O. Culbertson and Sons, a bank account was opened; books were set up which, when we finally got everything set up, were dated back as of November 1st. This sheaf of papers you hand me are a part of the books of W. O. Culbertson and Sons. Looking at these accounts, and with respect to the dates of the first entries on these books, here is one labor account dated October and November, 1939.

(At this time, the attorney for the defendant objected to the testimony of the witness on the grounds of qualification; said objection was overruled by the Court on the ground that a member of a partnership would know what the books were and whether certain books were his. The attorney for the petitioners stated that the intention was to prove the dates of the various accounts.)

The various accounts were set up here as of October and November, 1939.

As of January 1, 1940, I was twenty-four years old; my brother, Richard, twenty-two; Joe Jack was eighteen and Eugene was sixteen. They were all normal boys, capable of doing a full ranching day's work. I am married and was married in December of 1940; Richard was married in the spring of 1940 and is now married. Joe Jack and Eugene are not married.

During the year 1940 Richard was going to school but he spent some time at the ranch. I wouldn't say just what extent he worked on the ranch during that time. I don't recall whether he spent any time on the ranch during 1940. With respect to 1941, he graduated in that year and went directly into the Army; he graduated dur-

ing the latter part of May or the first of June of that year from Texas A. & M.. We had discussed what he was to do when he got out of school and our plans were to divide up the work on the ranch among all of us boys; in other words, I was to take care of the registering of cattle. He'd probably take the commercial cattle; probably my brother would take the bookkeeping work there in Dalhart and contact the buyers. He—my brother—had some education along those lines and until he took up that work, he'd probably tattoo or do some essential work on the ranch. During 1940, Joe Jack worked on the ranch during the summer before he started to school for three months; he did not work any during the school term. After 1940 he went to Texas A. & M. and came back during the Christmas holidays. He did not perform any of the services on the ranch during school term, after college. Joe Jack started to college beginning at the fall term 1940 some time about the first part of September. Joe Jack rendered services to the partnership during the summer of 1941. Eugene rendered services to the partnership during the summer and while going to high school in 1940; during his schooling term he worked on week-ends. During 1940 Gene came out during week-ends, for a day or two, to help with whatever we were doing. In the summer he rode after registered cows and had something to do with the registrations. We all pitched in and helped make those. That is quite a job in the fall, and as I recall, he helped tattoo that year, but I wouldn't say positively. Eugene was going to high school during 1941 and he rendered services to the partnership in the summer of that year; these services were generally of the same type I have mentioned.

It was satisfactory to me, personally, for my brothers to go to college and still get their share of the partnership profits; this was because we had all agreed that any education we had would help the partnership at a future time when we all came home.

As far as I knew, a partnership composed of minors was good in every way.

During 1940 and 1941 I hired all of the hands that worked on the ranch. I was foreman and I fired them; I made out the payroll and our bookkeeper paid them. Operating expenses of the ranch were handled through accounts or statements sent to me and after my okay were sent directly to the office and a check sent to the concern involved. Usually our bookkeeper, W. R. Robinson, signed the checks. I directed the care of the cattle during 1940 and 1941; I directed the breeding; occasionally I discussed the breeding and care of the cattle and the operation of the ranch with my father. It would be my guess that my father was out at the ranch on an average of once a month during 1940 and 1941. During the years 1940 and 1941, all of the partnership income was from cattle. During those years, Richard, Joe Jack, Gene and I were free to check on the partnership bank account; there was nothing ever said against it. When we needed money, we drew from the company, from Mr. Robinson. During those years each of us drew what we felt we needed; we had an understanding on that. We all drew a little money along for living expenses—what we thought we might need; we would all draw about the same. We didn't want one to draw more than the other at any time and we kind of set it up on an equal basis. This was the agreement between all of the partners in the partnership—the four boys and my father. Petitioner's Exhibit No. 6, the $57,000 note was paid off but first, there was a gift of $1,000 apiece, $4,000 in all from my dad. The date of that gift was December 30, 1940. Going back a little bit further, certain cattle were included in the $57,000 note and Coon and Culbertson later liquidated those cattle; we were given a credit in January, 1940 with respect to these cattle; it was the first of 1940, $5,930.

This credit reduced the note to $51,744.80. The next credit on the note was on June 10, 1941 in the amount of $30,000. W. O. Culbertson and Sons borrowed $60,000 on the cattle; this money was turned over to my dad and he credited our note for half of that because we owned half of the cattle. The other $30,000 was his of course. We drew it on the cattle. That $30,000 credit reduced the amount of the note to $17,744.80. That balance was discharged by another gift from my father on June 10, 1941. As of June 10, 1941, the $57,000 note had been paid out either by gifts or the transaction I mentioned.

The first time that I ever knew of the existence of the document signed by my mother and my father on December 8, 1939, identified as Petitioner's Exhibit No. 5, was while I was overseas, after May 1943; the first time I knew about it was when my dad wrote me and stated that he had a document which involved income tax some way or other and there was some question according to this document whether the partnership was valid and whether we owned the partnership. He didn't tell me a lot about it and I didn't know a thing about it. He suggested we take this to a Civil Court and determine whether or not our partnership was valid, a true partnership. He asked me what I thought about it and I told him, above all, to go on and straighten the thing out because it was my understanding we did have a partnership and I would like to have it cleared up. I don't know whether my brothers knew anything about that document before I did; so far as I know, they did not. I did not sign that document at any time. In the letter to me, I don't recall that my father went any further than to suggest we go to some Civil Court and straighten the matter out; he said the four of us boys would have to bring suit against him to straighten it out; sue him to see whether our partnership was good or whether this

document was good. I authorized him to have that suit brought.

At no time during any of the 1939 transactions did I hear anything said or mentioned about taxes; the possibility that anything I was doing might have tax effect never occurred to me.

Cross Examination.

I finished A. & M. College the last part of May, 1938, May 20th, I think. I was not in high school all the time prior thereto. I stayed a year on the ranch between my graduation from high school and the time I started to Texas A. & M. College. During the years I was at college, I just worked on the ranch during summer times. During the years 1934 and 1935, the Coon and Culbertson herd was quite large; as a guess I think we had around 5,000 or mybe more cattle at the time. The biggest part of them were registered stock but we started the commercial herd some time in 1936, I think; I am not certain. My father had a half interest in the herd.

I said yesterday that I had to go to somebody else to get funds to go to college; Uncle Dick loaned me money. Uncle Dick is not related to me. I talked to my father and he wanted me to stay on the ranch and make a little money; he didn't feel able to send me to college at the time. Those cows were valuable in 1934, I guess; probably a hundred thousand dollars.

After I got out of A. & M. in 1938, I started working at the ranch as foreman for Coon and Culbertson. I was the overseer. That continued on in 1939 and 1940 under the same arrangement, there being no change other than that I, of course, took care of the ranch, bought some feed, bought groceries, hired the men. In 1940 and 1941, my father principally did the selling, contacting the buyers. When we decided to buy some steers, it was by

mutual agreement before we went into anything like that. In 1938, I was getting about a hundred and a quarter, I imagine, counting a dividend we drew. It was probably something like one hundred dollars a month which we drew from the company. I started out with seventy-five dollars one time. In 1940 and 1941, my salary was one hundred dollars a month and board, which included my wife's board. The ranch is ninety-three miles from Dalhart. The partnership agreement between me, my brothers and my father, the oral partnership agreement of the early part of November, 1939, probably took effect, geographically, in Dalhart, I think. My brothers were present at the ranch in the fall of that year and we arranged for a partnership at that time—that was the first discussion after Mr. Coon had decided to sell his interest to us boys. My dad came out and we talked it over. Gene and Jack were out at the ranch as I recall. I don't know what day of the week it was or whether it was on a week-end. With respect to what was said about the creation of this partnership at that time, as I recall, my dad came out to the pasture and said, "Well, Uncle Dick wants to sell you boys his interest in the ranch." We had been looking for something like that all along. It wasn't really news to us in a way because we had often thought of that, hoped for it, and dad said something about what I thought of it. "Of course, you know what I'd think. He said, "I wonder what the boys will think about it?", and I said, "Well, you know what they wil say." We talked it over later with the boys who were there. Richard was in A. & M. at the time. The purchase of the cattle by my father from Coon and Culbertson and the sale by my father to me and my three brothers and the creation of the partnership was all one plan. I don't know just how it was divided up. What I mean is, it started when Mr. Coon wanted to liquidate due to old age. It was his idea that us boys,

would get his interest as an eighth apiece and it materialized that way. I wouldn't say I know what part I played in a lot of this business agreement. I guess our purchase was made at that time of the bill of sale. I understand that the partnership was created at the time we purchased the cattle from my father. We gave the note, dated November 6, for one-half of the purchase price which my father paid to Coon and Culbertson, to my father. I don't know where the note is now; it is tore up. We made another note later. The note of January 1 for $57,000 took the place of the original note and some additional money. I entered the Army on March 7, 1942. On January 1, my three brothers and I executed a note to my father in the amount of $57,674.80. The increase in the note came about this way: it started by a liquidation process of Coon and Culbertson; some of those cattle were liquidated and some were not. You can't sell them over-night. I think we had this string of bulls on our hands. Mr. Coon and H. Coon wanted to wind this up. We finally decided to take the bulls; we could handle them next spring. In the meantime, they found someone else wanted them and the bulls were sold for the price we paid for them, plus five dollars and this was credited on our note. This was the second instance on which I had undertaken to purchase cattle from Coon which were not delivered. In the late summer of 1939, we undertook to purchase a bunch of Brafords, but we never took possession nor got title. Mr. Coon sold them to someone else. This purchase was from Coon and Culbertson, but I never got the cattle. I gave a note before I took title and before delivery and during the same month, we were given a credit for the error. I wouldn't say whether we knew on January 1 that they weren't going to be delivered; it was probably in January.

This left a balance of $51,744.80; on December 30 of that year my father made a gift to us four boys of $4,000, it was credited on the note. On June 10, 1941, the $30,000 which represented one-half of the note of $60,000 which Culbertson and Sons had given to my father, was credited on the note; you see, W. C. Culbertson and Sons borrowed $60,000 from the Finance Company on our cattle and we turned this $60,000 over to my dad. He owned half of it; he owned a half interest in the company; us boys owned the $30,000; he credited that not for $30,000. This wasn't a gift; it was borrowed. On June 10, 1941, my father gave us, as a gift, all of the balance of the note, $17,744.80. It is not right to say that during all of the time from January 1, 1940 to June 10, 1941, none of the credits on that note were from income from the cattle; we had to pay that $60,000 off. At that time, we had no direct income from the cattle which had been applied to the credits on the note.

During the years 1940 and 1941, the other boys worked on the ranch what time they were not in school or not in the Army. They were both there during that year. They were all in school during those years. They couldn't get in much work on the week-ends; they would go out Friday evening and come back Sunday. Mr. Robinson didn't sign all of the checks; I bought a bull and I think I wrote a few checks. I was authorized to do so. As a general rule, Mr. Robinson wrote the checks until his death. I testified on direct examination that some of the items in the partnership books of Culbertson and Sons began in October and November, 1939. Account No. 57, a labor account, shows only two items; these items refer to labor but the only way I would know what they represent is to go back and find the other entries. With reference to your question whether capital accounts were set up either in 1939, 1940 or 1941 for each of the partners on the books of Culbertson and Sons, I don't understand what you

mean by "capital accounts." I couldn't answer your question whether accounts were set up on the books showing the amount of property that I, my brothers, or my father contributed to the partnership or whether anything was contributed because I wouldn't know too much about the books. The bull I testified as having purchased was for Coon and Culbertson. I have never purchased anything since or during the years 1940 or 1941 where I signed the check; nor did my brothers, individually, ever buy or sell any cattle for the partnership during the years 1940 or 1941. The first account of the document executed by my father and mother on December 8, 1939 was when my father called my attention to it by letter to me while I was in the service. I don't know whether he had advised my brothers about that document or not. As I recall, he didn't go into detail in his letter concerning the document. I just told him to straighten it out. He said something about it involving our income tax matters. I don't know anything about the proceedings that were filed in the District Court of Dallam County except what I have learned since I came back from the service. I was not present and I did not hire an attorney in that case; I turned it over to my father. I didn't testify in that case and I have never seen the decree of that Court.

On December 31, 1940, my father discussed with me bringing my sister into the partnership; I don't recall what it was. It was agreeable with me. I don't know whether she was made a partner on that date, December 31, or not. My dad told me that he and mother undertook to sell and convey to my sister Fannie an eighth interest in the partnership. I think our partnership operated during the year 1941 as though she were a partner. We should have filed a rturn for her purported interest in the partnership for 1941. I thought she was a partner. It is my understanding that my sister is a partner in the business.

She had an equal part, one-sixth, in this partnership arrangement. She renders services for the partnership now; she helps operate a store we have in conjunction with our cattle business. That store was bought by the partnership, but not for her husband. Her husband operates it. My brother-in-law is not a cattle man; he's a dry goods man. That store is in Dalhart about ninety-three miles from ranch headquarters. No accounts were set up in these books for that store; we have a separate set of books for the store. I don't know whether any account is taken in the partnership accounts for the operation of that store.

Re-Direct Examination.

With respect to the questions on cross examination concerning the value of the Coon and Culbertson herd in 1934, offhand I don't know the amount of loans that Coon and Culbertson had outstanding in those years, but they did have large loans. This was true in 1938 and in 1939 prior to the liquidation. In 1940 and 1941 the partnership of W. O. Culbertson and Sons was running about 1,400 breeding cows, more or less, and, of course, in 1941, we had offspring from this particular herd. During those years the herd was operated in a ranch of 52,000 or 53,000 acres. We didn't own any of this land; we had the use of the land under grass leases. With respect to the questions on cross examination as to whether our purchase of the Coon interest in the cattle came first or whether W. O. Culbertson and Sons was organized first, the first time I heard about the proposition was from my father at the ranch at which time he said something about Mr. Coon wanting to sell his interest to us boys and what we thought about it. I don't recall just when the conversation about organizing a partnership between us four boys and my father occurred; I know we discussed the matter

providing we bought these cattle, we'd go into such a partnership. This discussion was all the same day.

With respect to the questions on cross examination concerning the Brafords, my brothers and I sold these Brafords to Mr. East; Mr. Coon did not sell them. We got the difference between the price we agreed to pay for them at the time we bought them and the price that we sold them for to Mr. East. My brothers and I made approximately $5.00 per head on this transaction.

In his Will, Mr. Coon remembered my sister and I think Jack and Gene. Mr Coon did not remember either Richard or me in his Will. He helped me to go through college; as I recall, he helped Richard go through college but I wouldn't say.

Examination by the Court.

During 1940 and 1941, my father was out at the ranch perhaps once a month or so; during those years, he was living in Dalhart. We have an office in Dalhart and he would contact buyers, friends of his, and he would handle contracts for the sale of cattle and at the same time, he took care of the office and borrowing money from our finance company. He had no additional cattle or additional ranches that he was looking after. At the time this herd was purchased and the partnership was formed, this herd and the Braford herd did not comprise all of the cattle of Coon and Culbertson which they had owned before that: we took only a part. We took around 1,400 head of breeding cows, a number of herd sires, horses and such like. We took those over with the first note. During that time, Coon and Culbertson liquidated quite a number of cattle; I recall a thousand cows went to one person and there were some heifer yearlings and odds and ends. At one stage in the history of this matter, they had about 5,000 head. With reference to the time my

brothers and I took over this herd, Coon and Culbertson had sold most of what they had prior to the time of our purchase; we had not intended to buy the cattle they did not liquidate. After the partnership took over the 1,400 head and some other extras, my father didn't have any other cattle left other than these we liquidated.

Mr. Coon had helped me and my older brother but he died before my two younger brothers went to college and he left in his Will money to cover part of their schooling.

The note was credited with $30,000 which is one-half of the $60,000 borrowed from Mr. Wright at the National Finance. He was the witness on the stand here. The partnership of which I was a part, borrowed that $60,000; I did not sign anything in the bororwing of that $60,000, nor so far as I know did my brothers; my dad took care of that. That left the partnership owing Mr. Wright's company $60,000, of which the four boys paid off $30,000. That $30,000, the boys' part, which we owed Mr. Wright's company has been paid since then; I couldn't say exactly how long after the loan it was paid. The way we handled that account, we kept an open account at all times and borrow and pay off part. The partnership still owes them money. The $30,000 has been paid, however; it was paid by the partnership, by proceeds from the ranch.

I testified something about my father feeling unable to send me to college; with respect to his financial condition later on, I might clarify that by going into detail; the years '34 and '35, I think, were pretty hard years in the cow business. Uncle Dick was financially able to maintain any sizeable herd, but my dad was a partner only in the cattle. Uncle Dick had quite a number of other interests. Coon and Culbertson had borrowed quite a lot of money and, of course, were paying it back as the proceeds would allow. It's always been a policy of my dad, being very conservative, not to go in personal debt and until the disbursement of the balance of the herd or the liquidation,

he was not what you might say financially strong. He owned an equity in the cattle, a half interest in the cattle, but as far as owning any capital or ready cash, he didn't. He kept all of it in the herd. Independently of the money matter involved, he was not opposed to the idea of my going to college; he was in favor of it but he thought probably I should make a little money and put myself through school.

Re-Cross Examination.

I don't know the date this $30,000 was paid off; we kept an account; we'd pay off in the fall when we made calf deliveries. My father took care of the financial end. As I recall, Richard was not at home at the time the alleged partnership was created in 1939; I think he was at A. & M. at the time. He was notified, I presume, through my dad; he was asked about it. I couldn't say for sure when he signed the note; our bookkeeper W. R. Robinson, took care of that for us.

Re-Direct Examination.

It is the practice of the partnership never to pay all of the National Finance loans off; we pay them down to about $500, but we never pay that $500 because we want to keep our books open so that we won't establish a new line of credit. As I recall, we have several times paid all our debts down to $500, after the $60,000 was borrowed in 1940 by the partnership.

146 WILLIAM O. CULBERTSON, called at a witness on behalf of himself, being first duly sworn, testified, as follows:

My name is William O. Culbertson. I first made my offer to Uncle Dick Coon to purchase his interest in the foundation herd sometime in October '39. I think it was sometime in the morning when we were visiting in the lobby of the DeSoto Hotel. I told him we'd liquidated down to the best part of the cattle and I'd like to buy them. I made him a price of around $65 for the cows. I have tried to figure the exact amount but as best as I can figure it it was around that. Uncle Dick visited a little while and walked away and sometime a little later in the day come back to me and said, "Bill, come down to the office tonight and I'll talk over with you about the cattle"—buying those cattle I was interested in. He meant the Coon and Culbertson office. I went down there that night. Uncle Dick Coon, H. Coon, Mr. Walter Williams, were there.

"Q. Tell the Court in your own words what happened there that night?

"A. Well, we done a lot of visiting, talking about the herd and the hardships and hazards we'd went through and the general conversation about what had happened to us and we'd done a very good job getting through. Had dry weather and shipped hay in to feed the cattle and it was pretty tough.

"Mr. Coon happened to be able to take care of finances through his credit and we didn't go broke as usually some people did in them years, but we had a general discussion about that and he told me during that night, he brought that up about the cattle and he says he had a desire to see this herd go on, it was a herd of cattle it takes years to develop and he says, 'Developing a good

herd of cattle is a lifetime job.' He had made that remark a lot of times, and he had a desire to see the herd go on.

"He says, 'I will sell you my interest in the herd if you will in turn sell it to your four boys at the price you are paying for it' and this was the price that I had mentioned."

I went on and traded with him and I let the boys have his interest in the cattle. I'll give you a little more story there. When we started to fix up the bill of sale, H. Coon suggested that I buy the cattle negotiated for from Coon and Culbertson and let Coon and Culbertson give me a bill of sale for them, and then he suggested that, "you in turn can bill of sale a one-half interest to your four boys." I don't understand what you mean by the connection, according to what Uncle Dick says, between his desire that the herd be carried on and the sale to the four boys. I can tell you what went on and what we done.

When Uncle Dick made his proposition, I told him I'd see the boys and we'd go into it. I was sure the boys was very muchly interested. I later saw the boys when I went to the ranch. Richard wasn't there but I think maybe Gene and Jack were there; W. O. Jr. was there. I talked to W. O. Jr. first. We talked a little bit and then I told him, "Well, son, Mr. Coon wants to sell his interest in the cattle to you four boys and I want to talk it over." The price was mentioned. W. O. was very much enthused over it and very favorable to it. The question of the boys financing their end of the deal was brought up and I told them I'd finance the deal. I suppose they inquired about financing. I know I talked to Joe Jack and Gene about this while I was at the ranch; they thought it was mighty nice they could buy the cattle at the price. While I was out at the ranch on that trip, the boys and I discussed the formation of a partnership.

We talked different names for the company—Culbertson Cattle Company—and W. O. suggested Land and Cattle Company but we didn't own any partnership land and we dropped that idea. We have a neighbor, W. T. Mitchell and Sons; and we knew of other cattle companies which had the word sons in it and we finally decided to call the partnership W. O. Culbertson and Sons, at the suggestion of the boys.

"Q. Was there any discussion on that trip out to the ranch as to how profit or losses of the partnership would be divided?

"A. Equally as to the ownership."

I am familiar with Petitioner's Exhibit No. 1—the bill of sale from Coon and Culbertson to me describing certain cattle; I first saw that bill of sale when we made it up and signed it. The bill of sale is not dated but I have a way of fixing the date upon which it was executed. It was the same time I wrote the check to pay for the cattle in this bill of sale. I wrote a check to Coon and Culbertson at the time the bill of sale was delivered to me, in the amount of $99,440. That is my signature on this check you hand me.

There was offered and received in evidence a check reading,

"Dalhart, Texas, November 4, 1939. First National Bank of Dalhart. Pay to Coon and Culbertson's order $99,440, exactly $99,440 no cents. Signed W. O. Culbertson."

After I received the bill of sale from Coon and Culbertson, I executed and delivered to the boys a bill of sale. I have seen Petitioner's Exhibit No. 2, a bill of sale; it is signed by me and Gladys Culbertson, my wife. In

my practice I normally had my wife sign everything I signed. That bill of sale was delivered to the boys. The bill of sale was turned over to W. O. Jr. and, with the exception of Richard, the other boys were present. I don't know whether Richard saw it but I suppose he has. The boys later gave me a note in the amount of one-half of the cost of the cattle from Coon and Culbertson to me, one-half of $99,440. The interest rate was for four percent and for one year. Each of the boys signed that note. That note was later destroyed when we renewed it with another note. This document you hand me, Petitioner's Exhibit No. 6, is a note signed by the four boys on January 1, payable to W. O. and Gladys Culbertson in the amount of $57,000 ~~odd~~ dollars. The reason for the change in the amount of the note was, when we first made the deal with Mr. Coon there were things—a truck, pick-ups, feed, salt, saddle horses, milk cows, work horses, cooking utensils, things that belong to the ranch that wasn't included in the deal and no price made on it; it was put into the partnership, and the difference between forty-nine and fifty-seven was the boys' half. There was some other consideration put in there, but I just can't recall it.

At the time me and my wife delivered the bill of sale to the four boys, to W. O. Jr., the only condition attached to the delivery of that bill of sale was the note. I don't reckon there was any talk about who would control the partnership. I don't recall the conversation or know whether it come up at the time I delivered the bill of sale to W. O.

After my discussion with the boys and the delivery of the bill of sale, we went right ahead transferring the title from Coon and Culbertson to W. O. Culbertson and Sons of all certificates of registration issued by the Hereford Breeders Association of Kansas City; in order to do that, we had to have a transfer of the Coon and Culbertson membership to W. O. Culbertson and Sons and this is the

membership we had transferred effective November 13, 1939. This membership or certificate, I refer to, is this certificate for one share of stock in the American Hereford Association, in a picture frame.

The document referred to was marked Petitioner's Exhibit No. 7 and was offered and admitted in evidence.

This certificate is dated November 13, 1939.

"The Court:

"Let the record show that this exhibit bears the number 6147, apparently the certificate number, of one share of stock in the American Hereford Association."

This certificate, Petitioner's Exhibit No. 7, constitutes the evidence sent me by the American Hereford Association of our membership therein and our right to register Herefords; under the membership they have an extra cost on work they do in the office if you are not a member. We'd rather be under the membership if we have papers transferred or send in applications for registering of calves.

After the formation of the partnership of W. O. Culbertson and Sons, we had stationery printed in 1939. This sheet of paper which has been identified as Petitioner's Exhibit No. 8 is our letterhead.

Petitioner's Exhibit No. 8 was offered and admitted in evidence.

During 1940 and 1941, W. O. Jr. was in charge of the ranch and the cattle we acquired from Coon and Culbertson up to the time he went into the Army. I just can't recall approximately how many times I was out to the ranch in 1940 and 1941. I would say frequently. During

those years there were never any objections put to the boys' right to check on the partnership's bank account. W. O. testified about the agreement the boys had to draw whatever amount of money they needed; they kind of had an agreement about drawing so much money along. It was talked over and I was in the conversation. I never put any restrictions, myself, on the amount of money the boys could draw; they talked it over and fixed it. I never endeavored to tell W. O. Jr. how this ranch should be run; we'd have a general conversation about how things were running along. In 1940 and 1941 I got to where I couldn't ride; I was not like I had been in my earlier days; my hip was broken and it hurt me to ride a little.

With reference to how the $57,000 odd dollar note was paid off, I don't know whether I filed a gift tax returns or not. I'd have to leave that to records. If the retained copies of my gift tax returns show that I filed them, I'd say that I did. With reference to whether I have ever filed income tax returns or not, I have it made up; they make it up from the books. Different fellows in different years make up my income tax returns. Personally, I have never made up a tax return of any kind; I don't know how to. I have never investigated any one of my own returns. The usual course I follow about tax returns is, we have our books and everything goes to the books, any money we get goes to the books and it is made up from the books. To go way back, we had Mr. Cole make income tax returns then I got Mr. Coon in Amarillo for one or two years, but not long. After they complete a return and hand it to me, I never check it. I generally go into a little conversation, ask if that is as little as they can make it, I don't want to be out any more money—and if they say that is the best we can do, I generally have a conversation of that kind. Then I sign and pay it.

This gift tax return for the year 1942 indicates W. O. Culbertson, Dalhart, it is a blank copy and I don't know whether I filed that gift tax return or not.

"Mr. Bird:

That isn't a blank copy; I might say it has figures attached to it. Do your files happen to reflect whether Mr. Culbertson did file tax returns for those years, Mr. Kelley.

"The Court:

"Does the government make any contention that Mr. Culbertson did not file gift tax returns for the year '40 and '41.

"Mr. Kelley:

"Your Honor, it's a matter I haven't looked into. I don't know."

I believe I went up to the eighth grade in school; after I got out of the eighth grade, I worked on cow ranches. Other than signing the returns I have mentioned and this particular case, I haven't had any tax experience at all.

In my proposal to purchase from Mr. Coon and in the sale of a half interest to the four boys, and in the organization of W. O. Culbertson and Sons, income taxes did not have any part or bearing or play any part at all. Taxes were not mentioned. Taxes didn't have nothing to do with it. It didn't ever occur to me that taxes might be important; it was never mentioned.

All of the four boys are of age now; they have never attempted to repudiate this partnership or say that it was not a good one, in any way. The signature on Petitioner's Exhibit No. 5, dated December 8, 1939, which document you hand to me, is signed by W. O. Culbertson and Gladys Culbertson; these are the signatures of myself and my wife.

Petitioner's Exhibit No. 5 is the document that was prepared by my attorney, at my request; I asked my attorney to prepare a document.

"Q. Tell the Court where the idea of such a document originated and any conversations you might have had and how you happened to have that document prepared? Tell it in your own language.

"A. I had a conversation with Mr. Wright who testified yesterday in regards to establishing the financial, and told him of our new company that we just set up and explained to him that Mr. Coon had sold his interest in the Coon and Culbertson, interest in the Coon and Culbertson cattles to W. O. Culbertson and Sons, and we had set up a new partnership, and we'd like to open up a credit with him, because we have to finance, to go on with the ranch.

"After our conversation, I told him of the boys age, two of them were under age, wasn't of age and he said that in order for him to pass a loan with his company, for me to have my attoney to draw some kind of document whereby his attorney for the finance company would accept it.

"Q. Do you recall approximately the time of that conversation, Mr. Culbertson, with Mr. Wright?

"A. Well, I'd say it was in November. That is a guess.

"Q. Do you recall where it occurred—November what year, pardon me?

"A. '39."

I know we had the conversation, but I don't recall the dates; the conversation occurred in Fort Worth.

"Q. What did you do with respect to his suggestion?

"A. I went home and told my attorney. Well, I explained to him about our partnership in detail and told

him we was going to establish a line of credit for it and for the reason that two of the boys were under age, that Mr. Wright, the head of the finance company, suggested that I have a document drawed whereby I could sign mortgages and borrow money and a document their attorney would accep'

"Q. Who was your lawyer?

"A. M. Stalloup.

"Q. Mr. Culbertson, did you instruct Mr. Stallcup as to any of the terms he should put in the document?

"A. I did not.

"Q. This document says 'Whereas the undersigned, W. O. Culbertson and Gladys Culbertson, husband and wife, are the owners of certain livestock land leases, ranch equipment and supplies located in Hardin County, New Mexico, desiring to make provisions for the welfare of our sons, W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson, and Eugene Culbertson, and desiring to establish them in business as and when they arrive at a proper age to engage in business"—did you mention any of that to Mr. Stallcup?

"A. I did not.

"Q. (Reading) 'And further desiring to induce our said sons after they reach such state of maturity to contribute their time and services in building up and establishing a common family estate'—did you mention anything about a family estate?

"A. I did not.

"Q. (Reading) 'And desiring to suitably reward them for their assistance to us in so doing'—did you tell him you wanted to give them anything—the boys anything?

"A. I didn't tell him anything about giving anything, no.

"Q. Did you tell him that you and your wife were to have sole and exclusive right and control and management of the partnership?

"A. No, I did not.

"Q. Or the partnership properties?

"A. I did not.

"Q. Did you tell him what you wanted to have happen in the event one of these boys died?

"A. I did not.

"Q. After the document was prepared, Mr. Culbertson, did you read it?

"A. Mr. Stallcup read it to me.

"Q. Did you question him about its terms?

"A. I asked him, I says, 'I reckon that will be acceptable to the National Finance people?

"Q. Do you recall what his reply was?

"A. He said it should.

"Q. Did you sign the instrument?

"A. I did.

"Q. What is your practice in dealing with your attorney, Mr. Culbertson?

"A. When dealing with him, I do what he tells me to do."

With respect to the question whether I claim that my daughter, Fannie, is a member of this partnership for the year 1941, you (Mr. Bird) told me she wasn't. The question whether I am claiming her as a partner for the year 1941 is not in this case, but I claim she is a partner.

In executing this document of December 8, 1939, I did not intend to qualify or change anything that had theretofore existed between me and my sons. I did not intend to change their ownership of the cattle. I didn't realize that the signing of this document of December 8 might tend to change the partnership or give me any trouble when I signed it. I signed that instrument for the purpose of establishing a credit under the advice of Mr. Wright who is the Head of the credit company. After it was signed, I sent the original to Mr. Wright. It was

never filed of record. I did not make any other use of this instrument. Later, when I decided to take my daughter, Fannie, into the partnership it was used. I told Mr. Stallcup about taking Fannie into the partnership as one of the partners and he wrote another one for her for the same purpose that this was for. Fannie was a minor at that time. With respect to when W. O. Jr. and the other three boys first knew about this document of December 8, 1939, I wrote W .O. Jr. in regards to having wrote it; I explained why a document—as I have explained here and there was some—I don't know just how to put that word—criticism as to regard of it affecting their ownership. I don't know who was criticizing it—I believe the Government; that is the way I put it. The individual that was doing it, sets right there, Mr. Jordan (pointing to Internal Revenue Agent Jordan). In writing to W. O. Jr. I told him I thought we'd better confirm his, the boys' ownerships through the Courts. The first time I knew that this document of December 8, 1939 would effect or might affect the partnership of W. O. Culbertson and Sons was after my conversation with Mr. Jordan here. With respect to the questions Mr. Jordan raised, I came to Fort Worth to see Mr. Wright and we talked it over and he suggested I get an accountant and he suggested Mr. Y. D. Harrison and called him up and he came over to the office and we went into it. I employed Mr. Harrison at that time. Mr. Harrison advised me that he would take care of the case and take it up with them. So far as I know, he did.

With respect to my writing W. O. suggeting that some state Court proceeding be brought to determine whether the partnership was good, Mr. Harrison, I believe, put that proposition up. I don't recall what he said about it. At about the time I advised W. O. of the document of December 8 and of Mr. Harrison's suggestion, the other three boys were around and I talked it over with them. I don't

recall the dates but I have been connected with them in conversation at times. I believe Richard went to the Army when he got out of A. & M. With respect to whether I advised either of the boys of the existence of this December 8 document prior to the time I wrote W. O. Jr. about it, I might have mentioned it but I couldn't say. I expect I mentioned it about that time. I didn't mention the document to any of them until after this little trouble come up, that is, after my conversation with Mr. Jordan. After writing W. O. and hearing from him, I employed Mr. Stallcup, the attorney, and told him this thing came up and there was some opinion as to the title of the boys property involved and I'd like to confirm it through the Courts. I am not right sure but I think maybe he wrote Mr. Harrison. Later we had a trial of that case. Three or four was present. I was there; none of the boys were there; Mr. Stallcup was there. My wife and daughter wasn't there. After the trial the state Court rendered a judgment. I suppose this document, identified as Petitioners Exhibit No. 9, is the judgment which the District Court of Dallam County rendered in the case of W. O. Culbertson, Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson versus W. O. Culbertson and wife; ye; that is the judge's name.

The said judgment, being Petitioner's Exhibit No. 9, was offered and admitted in evidence.

Cross Examination.

At the time we undertook to establish this partnership between me and my boys in November, 1939, I did not file a certificate in the Probate Judge's office in Dallam County or any other county showing that we had created such a partnership and were operating under the name

of W. O. Culbertson and Sons; I did not know that statutes of the State of Texas require such a filing when such a partnership is formed. With respect to the time I talked to W. O. Jr. and the other two boys out on the ranch about the creation of the partnership, I testified I stated, "I will finance the deal", after they told me they didn't know how they would be able to pay for the cattle; that come up in the conversation between us in regards to financing it. They gave me a note for these cattle. Later down the line I made them gifts in payment; I didn't pay it all off but did pay a considerable portion of it—all but the $30,000.00 which was borrowed, and a credit by an error that was made in the first place. I borrowed the money for the partnership. At the time the boys gave me this note, it was due and payable one year after date. With respect to whether I felt the boys would be able to pay it off in a year, I didn't give it much thought at all; I just told them we'd make the note for a year. I made them that proposition—finance it in one year. I didn't intend for these to be gifts to the children; I never gave it any thought at the time.

I testified I gave the bill of sale to W. O. Jr.; I couldn't tell you whether the other boys saw it or not. In 1940 and '41 W. O. Jr. was foreman at the ranch; he was general manager; I more or less looked after the business end around the office in Dalhart and out buying cattle or selling cattle. I bought some cattle and W. O. went with me, I will say that.

I don't think W. O. ever wrote a check for cattle bought in 1940 and 1941 nor did the other three boys that I know of.

I testified that Petitioner's Exhibit No. 5, the document of December 8, 1939, was prepared at the suggestion of Mr. Wright, Manager of the Finance Company from whom I expected to establish a line of credit.

"Q. Now, what did he tell you when you talked to him about reducing this to writing?

"A. Reducing what to writing?

"Q. The partnership agreement?

"A. I don't believe he put it that way.

"Q. How did he put it?

"A. He told me there was two of the boys in the partnership that were minors and he would extend a loan, be glad to, if I'd have my attorney draw a document giving me the power to sign notes or mortgages, that their attorney would accept, then he would take care of my loan for finance."

I testified in the District Court case in Dalam County; in that case, I was asked a similar question. With respect to whether I remember testifying, "Yes, I talked to Mr. Wright about it. He said, 'You better get your partnership business in a form of writing whereby you will have the right to go on and borrow money'," it don't sound like it. I testified to that effect.

That is my signature on what purports to be a protest filed by me with the Internal Revenue Agent in Charge with respect to the tax liability in this case. In that I stated "this is in regrad to Mr. Wright's conversation. Mr. Culbertson explained that he and his four sons were operating a cattle business in partners under an oral agreement whereupon Mr. Wright advised that before his loan company would make a loan to W. O. Culbertson and Sons, the partnership agreement would have to be reduced to writing." If it says so there, I swore to that statement before Miss Marie A. Mitchell. It wasn't my understanding that the effect or intention of this was to reduce our partnetrship agreement to writing. I do say that in November, 1939, I sold a half interest to my boys. I read or Mr. Stallcup read to me the document of December 8 which he prepared for me and which I

signed. If I sold a half interest in the stock in November 1939, then with respect to what I meant by the following statement,

"Whereas, the undersigned, W. O. Culbertson and Gladys Culbertson, husband and wife, are the owners of certain livestock leases, land leases and ranch equipment and supplies located in Hardin County, New Mexico—"

Mr. Stallcup wrote that up the way he wanted it for certain purposes and I signed it. It's an error on my part if I didn't call his attention to the fact that I only owned a half interest. The explanation of the following language,

"desiring to make provisions for the welfare of our sons, W. O. Culbertson—naming them—and desiring to establish them in business as and when they arrive at a proper age to engage in business, and further desiring to induce our said sons after they reach a state of maturity to contribute their time and services in building up and establishing a common family estate, and desiring to suitably reward them for their assistance to us in so doing, and in order to establish with them a limited partnership in a ranching enterprise to be known as W. O. Culbertson and ons"—

I told you that wasn't wrote under my suggestion. I think he copies that document from a law firm out of Houston. I can prove that. He read it to me and I signed it. Reading further,

"Wherefore, know all men by these presents, that we, W. O. Culbertson and Gladys Culbertson, for and in consideration of the sum of ten dollars to us paid and other good and valuable consideration, do hereby and by these

presents sell, and convey unto W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson, and Eugene Culbertson, and to each an undivided one-eighth interest in and to the following described property, to-wit:

"About 1400 cows, 35 head of bulls, 50 head of calves, 30 head of horses, together with all ranch equipment leasehold estate and any and all other property located in the Hardin—on the Hardin County, New Mexico ranch, including property acquired from R. S. Coon as of November 1, 1939."

I signed that but not for the purpose of their title, for the other. Mr. Stallcup read to me the following,

"This conveyance is made subject to the following conditions and stipulations, to-wit:

"1. The grantors, W. O. Culbertson and Gladys Culbertson reserve to themselves the sole and exclusive right and control and management of such properties herein conveyed with increases thereof until the time that the youngest of our said sons living shall have arrived at the age of twenty-one years."

With respect to whether I made any object to that statement, I said, "I guess it will fill the purposes wrote for." With respect to the statement,

"In fact, to manage and control the property herein conveyed without restrictions and in such manner as may by them be deemed proper, until the youngest surviving son shall have arrived at the age of twenty-one years and until such time, it shall not be necessary to obtain the verbal or written consent of either of said sons or of any instrument in writing—from either of said sons to any transactions desired to be done on the premises by the grantors herein."

We never exercised our rights to that at all; I signed the document for other purposes than that. I signed this document without ever inquiring of my sons whether they would agree to it. The document further provides,

"It is further made a condition of this conveyance that neither of our said sons shall have the right of withdrawal of any part of his interest in such ranch enterprise or of sale until the youngest surviving son shall have reached the age of twenty-one years, but at such time either one or all of said sons shall have the right to withdraw and shall be entitled to receive his interest therein, but his interest shall be equal to an undivided one-eighth in value or property in kind of—after all liabilities, if any, have been liquidated.

"In tetstimony whereof, witness our hands at Dalhart, Texas, this the 8th day of December, A. D. 1939, but to become effective on the 1st day of January 1940.

I don't know why I put that statement in there if a partnership was created in 1939.

On December 31, 1941, I undertook to bring Fannie in as a partner; I sold her a one-eighth interest in the partnership out of my part. This is my signature on this photostat, which I suppose is a photostat of the original which I signed. This is the document whereby Mrs. Culbertson and I gave Fannie a one-eighth divested interest. With respect to what I meant by the provision in the first paragraph reciting the execution of the document of December 8, 1939, and

"Whereas, said trust instrument and the partnership thereby created is now in full force and effect."

Mr. Stallcup wrote the document and read it to me. I understood what it was for and I signed it for the same

purpose. I say I signed the one of December 8, 1939 for the purpose of using it to establish a line of credit; I signed this one for the same reason, so that if they'd called on me for it, I would have had it set up. If the loan company had called on me for a document, because she is in the partnership, I'd have it to help my credit. Fannie gave me a note for whatever the record says. The figure is $13,488.27. With respect to how old Fannie then was, she was born in 1926. With respect to Fannie paying that note off, probably further down the line she helped to pay it off; I don't know; I might have given her the entire amount.

Over objection of the attorney for petitioner, Respondent's Exhibit No. A, being the conveyance from W. O. Culbertson and wife to Fannie Culbertson, was admitted in evidence. The objection was that, there being no claim that Fannie is a member of the partnership for tax purposes, the document was immaterial.

I testified this morning that Mr. Bird advised me not to claim Fannie as a partner; I personally think she is a partner.

I can't recall when I received the notice of deficiency in this case; if you state it was mailed to me on December 17, 1943, I'd have to go over the record because I can't remember good. Following the receipt of that deficiency notice, I talked to Mr. Stallcup about the petition which was later filed in the District Court of Dallam County. I talked to him some time or another about it with regard to the ownership of the boys in the Court. I got Mr. Stallcup to file that petition as counsel. I suppose I paid him a fee for it. He filed a petition on behalf of the four boys and my daughter. If that is what it says, I guess it is correct to say that the petition was filed in the District Court of Dallam County on Febru-

ary 23, 1944; I guess that on February 26, three days later, me and Mrs. Culbertson filed an answer to that petition. Mr. Stallcup, the judge and Court reporter were in the Court room. I don't suppose there was anybody but me and Mr. Stallcup, outside of the officials of the Court. The reason of that is they called a special time to go through the procedure. I suppose I was called as a witness for the boys.

The petition filed in that Court, together with the Respondent's answer, were admitted in evidence as Respondent's Exhibit B.

A certified copy of the transcript of the evidence of that case was admitted in evidence as Respondent's Exhibit C. In reply to the suggestion of counsel that it might be possible to select particular parts of the transcript of evidence, the Court suggested that parts of such record could be later omitted by stipulation.

I am not very familiar with the books of the partnership; I don't pay any attention to them; there might be some item I could remember. I don't understand how to keep books. I couldn't tell you whether there is any capital account set up here on behalf of the partnership members or not.

I signed this document you hand me, the partnership return of W. O. Culbertson and Sons, for the year 1940; in that return the date of organization of the partnership is stated to be January 1, 1940. In making up our report, we didn't make any report until the first of January, 1940. There was no income made and we didn't make any.

Respondent's Exhibit D, being the partnership income tax return of W. O. Culbertson and Sons for the year 1940 was admitted in evidence.

In 1941 the partnership made a similar return of income in which the five children and me were listed as partners. If she is in there, that is the year after I brought Fannie in as a partner. If it states that the date of organization of the partnership is January 1, 1941, all I can lay that up to is the man who made my report, made it wrong. I signed it but he made it wrong.

The partnership income tax return for 1941 was admitted in evidence as Respondent's Exhibit E.

Attached to the 1940 return as certain schedules on letterheads of W. O. Culbertson and Sons. That letterhead shows W. O. Culbertson and the four sons, W. O. Jr., Richard, Joe Jack and Eugene. Certain schedules were prepared on letterheads of W. O. Culbertson and Sons, with the names W. O. Culbertson, Sr., Gladys Culbertson, W. O. Jr., Richard, Joe Jack, Eugene and Fannie Culbertson thereon. By the statement appearing under each of the names, "All equal owners in W. O. Culbertson and Sons", I meant myself and my wife are one part. That is what I am telling you now. A letter dated April 23, 1946 written by Marie A. Mitchell to Mr. William G. Cullen, Head of the Southwestern Division of the Technical Staff, on the letterhead of W. O. Culbertson and Sons, has this, "W. O. Culbertson, Sr. and Gladys Culbertson" followed by the names of each of the children and then the statement, "All one-sixth owners in W. O. Culbertson and Sons.". I didn't sign that but that is our letterhead. I use such letterheads like anybody else uses letterheads, for the same purposes. We had three different sets of partners for different years.

Over objection of petitioner that the offered letter, being dated in 1946, had no bearing on the issue, there was received in evidence as Respondent's Exhibit F, a

photostatic copy of the letter referred to, for the purpose of showing the names appearing at the top of the letterhead; the letter was allowed in evidence to show the letterhead and not the contents of the letter. In a discussion between counsel for petitioner and for Respondent, and the Court, counsel for petitioner made the statement that it is the petitioner's claim in this case that only the following persons were members of the partnership of W. O. Culbertson and Sons during the tax years 1940 and 1941: W. O. Culbertson, W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson; that petitioner does not claim that Fannie was such a partner for tax purposes.

Not all of the boys are rendering services out on the ranch at the present time; W. O. is and Richard has some lately, but they were all out there some time back and worked on the ranch. In this year they was out there. I believe that in 1940 and 1941, all of the boys were in school except W. O. Jr.; two were in high school and one in college. When they weren't in school, they was right on the ranch working.

Re-Direct Examination.

I don't understand your question as to whether I ever heard of one man forming a partnership with himself. I have heard of a partnership between various individuals when some of the individuals didn't have a written agreement.

During the years 1940 and 1941 neither W. O. Jr., Richard, Joe Jack or Eugene knew of the document of December 8, 1939. At the time I sold an interest to Fannie, she was a minor. That was the reason the instrument of December 31, 1940 was drawn by Stallcup—because she was a minor. That was the reason the original docu-

ment of December 8, 1939—because two were minors. I didn't know whether the statutes of the State of Texas require that a certificate of partnership be filed in the county records in order to make the partnership valid; I don't know it now.

During the tax years involved, aside from my interest in W. O. Culbertson and Sons, the partnership, I owned a home in Dalhart and my wife and I personally owned a little ranch of about 10,000 acres, of which one-half was deed land and one-half we leased, of it we owned about 5,000 acres and leased 5,000. As I recall my income from that little ranch was about $1,600 per year.

Re-Cross Examination.

I stated this morning that I purchased those cattle from Coon and Culbertson for a price averaging about $65 a head, with the exception of some bulls and herd sires. I couldn't tell you whether the value of those cattle increased any in 1939. I might have inventoried them for income tax purposes in the following year at $60 per head; I don't know—the records are the best evidence. That is my signature on this letter to Mr. Jordan, Internal Revenue Agent. This letter of June 24th requests copy of cattle inventory in detail as of December 31, 1940; at the bottom, it says, "average price $60 per head, $131,460". That is what I inventoried them at. With respect to whether under that theory, I didn't buy these cattle at any particular bargain price from Mr. Coon, you have my evidence here. I stated it was a bargain price but it says here I inventoried them at $5 a head less than I paid for them, the following year. The reason I didn't tell the boys about the document of December 8th that me and Mrs. Culbertson signed is that I didn't think they'd be concerned in it. While I testified that I drew it up for the purpose of establishing a line of credit for

them, I didn't think they would be interested in knowing about that. With respect to your question, "You didn't want them to know that you still controlled and managed these cattle?", I answered you.

Re-Direct Examination.

My last answer was that I didn't think they'd be concerned in this document. With respect to whether I had sole control of these cattle, I had a right with the National Finance to sign mortgages or notes for expense money. The boys and I had agreed I'd handle the finances. The purpose of this document was to be a means whereby I was to borrow money for the partnership to run on; the document was not signed for any other purpose. That is the reason I thought the boys were not concerned with this document. I have already testified that I didn't think this document affected the boys or the partnership in any way.

Re-Cross Examination.

I have not told Mr. Wright that I believed that document to be null and void, at any time since I filed that document with the National Finance Credit Corporation. I haven't told Mr. Wright anything about filing the petition in the District Court of Dallam County to declare it null and void.

Re-Direct Examination.

As I have testified, the first time I knew the document of December 8, 1939 had any bearing at all on the partnership was when Mr. Jordan, the Internal Revenue Agent, told me that it did. I testified that shortly thereafter I came to Fort Worth and consulted Mr. Wright

about it, and that Mr. Wright asked me to get Mr. Harrison; they talked about it a little while and Mr. Wright and one of his helpers called him in the office. In my discussions with Mr. Wright or in discussions in which he was present, the question of whether the December 8, 1939 document was valid was not discussed. I remember that on the day you (Mr. Bird) and I talked to Mr. Wright about the validity of the instrument, we discussed whether it was good or worthless; we said it wasn't worth anything and didn't have no effect in the partnership whatever. I don't remember whether I at any time told Mr. Wright I thought the document was not worth anything; I hadn't up to that time.

Examination by the Court.

$60,000 was borrowed of which $30,000 would be the portion of the debt allocable to the boys—one-half. That $30,000 was paid off through the selling of the cattle and sending the money to the loan company; through the sales of cattle off the ranch, that the boys owned an interest in. Personally, I did not directly or indirectly make the boys a gift of any part of that $30,000; it was paid out of partnership assets.

The boys worked on the ranch which was ninety-three miles from Dalhart. This ranch was located at Bueyeros, New Mexico.

"Q. Now, during the years 1940 and '41, Mr. Culbertson, who determined the policies of the partnership, that is, the policies as to when to buy cattle and when to sell, when it was wise to sell; who determined that?

"A. Well, in conversations with myself and my boys, we'd decide on doing something, as we do now.

"Q. Did you rely upon the boys' ideas in that regard or use your own judgment?

"A. I relied upon the boys if they didn't want to do anything, I wouldn't do it at all."

Stallcup's fees for handling the suit in the District Court of Dallam County were paid by the partnership; any counsel of that kind is always paid out of the partnership if it is pertaining to a partnership matter.

The boys worked out on the ranch various times on the summers when they were in school and W. O. worked there both before and after he got out of college. The boys drew salaries when they worked steady. When they worked only two or three days at a time, they didn't make any charge. If they were out there any time, they drawed a salary for it. They done lots of work they didn't get anything for, just two or three days, nothing paid for it. With respect to the amount per month the different boys were paid when they were working there for considerable lengths of time, I noticed somewhere a record about those years; one of them was drawing $35, $40 for one, pertaining to Gene and Jack. I think Richard drawed more money and W. O. drawed $75. W. O. said he drawed $100 in '40 and '41. These were monthly salaries. I did not draw any salary and I have never drawed any salary. (Witness excused.)

"Mr. Bird:

"That is all the witnesses we have. If the Court will permit, I will make this statement. I had planned, originally, when the case came to me, to use Mr. Stallcup, the lawyer whose name you have heard mentioned here. By agreement with Mr. Kelley, we were going to take his deposition. I went to Amarillo and found out he was a man of seventy-five years old and that he was in a veteran's hospital and he had just been operated on. After talking to him, I concluded I could not sponsor him as a witness for the reason his memory was failing."

The following stipulation of fact was agreed upon:

"That so far as we have been able to find, there are no accounts set up in the books showing who owned the partnership, nor the ownership of any individual, in the partnership."

Thereupon petitioner and respondent rested.

The parties certify that the foregoing contains the substance of all the evidence given at the hearing of these proceedings.

BENJAMIN L. BIRD,
(Benjamin L. Bird)
Counsel for Petitioners.

909-913 Sinclair Building,
Fort Worth 2, Texas.

THERON L. CAUDLE, C.A.R.
(Theron L. Caudle)
Assistant Attorney General.
CHARLES OLIPHANT, C.A.R.
(Charles Oliphant)
Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

The foregoing statement of the evidence is approved and ordered to be made of record in the above numbered and entitled cause this 22nd day of December, 1947.

(Sgd.) R. L. DISNEY,

Judge of The Tax Court of the United States.

originated the now internationally famous Hereford steer, a cross between Brahmas, the sacred cattle of India, and Herefords. No 1 beef cattle of the world.

Herefords have never been able to thrive in a line east of climate-wise Brahmas thrive in such a climate and so will the cross. Hereford therefore opens up these areas to grow beef production. Prize beef is said to be second only to Hereford.

Under the dissolution many cattle were sold, but Culbertson & Sons, the name under which Culbertson and his boys will operate, have title to the pick of the entire herd of Coon & Culbertson breeders.

In addition said Culbertson yesterday, "we have 6 topflight selected sires, including the two outstanding bulls, the $2500 Jay Hawkeye Domino and The Real Prince Domino 100th."

Culbertson & Sons said Culbertson will continue to raise registered Domino Herefords, the cattle that made Coon & Culbertson internationally famous. Their range will be in Eastern New Mexico with headquarters near Bueyeros in Harding county.

Probably said Coon yesterday, an arrangement will be worked out under which both Coon and Culbertson will maintain joint offices in Dalhart.

Coon & Culbertson were proud of the fact that 75 per cent of their business was made up of repeat orders. In recent years they have sold upward of 1,000 registered Domino Hereford bulls annually. Biggest shipment of bulls at one time was 300 to the Palomas Land & Cattle Co., which has its range in New Mexico but its offices at Columbus, N. M. This was also the largest international shipment of registered bulls ever made by any firm as far as known. As one time the Palomas firm had 3,000 Coon & Culbertson bulls in service on

[illegible] county [illegible] chairman said [illegible] final report on total membership in the county will probably be released Monday.

Under agreement with the Texas Publicity Association, the Red Cross drive ends on November 30 and the annual Christmas seal sale opens to continue through December.

Of Meter Tests

Forrest Campbell, Abilene head of a West Texas Utilities Co. meter testing crew now in this city, spoke at the Rotary Club luncheon Friday. He explained duties of the crew, methods of testing meters and other details of the work.

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USE YOUR CREDIT

THE TAX COURT OF THE U.S.
DOCKET NO.
FILED
NOV 2 1936
PETITIONER'S EXHIBIT

STATE OF TEXAS

COUNTY OF

Deed of Gift by [illegible] and [illegible]

of the County of [illegible] State of [illegible]

[illegible]

[illegible]

[

STATE OF TEXAS

COUNTY OF Dallas

Know all Men by these Presents: That W. O. Culberson & Gladys Culberson

of the County of Harding, State of New Mexico, hereinafter called Mortgagors, in consideration of the sum of

Ten & Other Obligations Dollars, to us paid by W. O. Culberson, Jr., Richard Culberson, Joe Jack Culberson, Florence Culberson

and Jack Murphy (these presents do Largaine and sell unto W. O. Culberson, Jr., Richard Culberson,

Joe Jack Culberson, Florence Culberson and W. A. Buchanan, Culberson

fully agreeing hereby, to warrant and defend the title to the same unto the said Mortgagee, their heirs and assigns forever, all of the following described personal property, to-wit:

One-Half Interest

No. Head	Class	Age	Description	Brand	Color	Location and Marks
216	cows	4-8	Registered Hereford			O-Left Jaw
62	Hfrs.	coming 2	"			
60	cows	2-8	Tura Bred			
1	Hfrs.	Calves	"			(1 Yr)
12	Bulls	2-8	Registered			
1	"	2	"			Real Prince Domino 10053
1	"	2	"			Jerkwater Domino

Cattle situated at P.O. DeBeque & Sawyer Ranches, Harding County, New Mexico

Witness our hands this 1st day of Jan. 1951

W. O. Culberson

Gladys Culberson

DISSOLUTION OF COON & CULBERTSON RANCH IS ANNOUNCED

THE TAX COURT OF THE U.S.
DOCKET
EVIDENCE
NOV 12 1946
EXHIBIT 3

Ranch Firm Was One of World's Famous Spreads

Friendly dissolution of the Coon & Culbertson ranch partnership, one of the most famous ranch firms in the world, was formally announced yesterday.

The announcement was made by H. Coon, nephew of the founder and for many years associated with the firm.

***

The Last Sale

The last Coon & Culbertson sale in Dalhart yesterday. It comprised 98 two-year-old registered Domino Hereford bulls that were sold to J. D. Cage, big cattle operator of San Antonio. "Those are as good a bulls as ever left our ranch," declared Culbertson, who showed that he felt deeply as he weighed this last material evidence of a famous partnership melting away into the past.

***

R. S. (Uncle Dick) Coon, of Dalhart and Houston, founded the ranch about 1903 with ranch headquarters about where the O. H. Ranch ranch is now in the Rehm community, 10 miles southwest of Dalhart.

Office headquarters, however, have always been in Dalhart. W. O. (Bill) Culbertson, in 1915, bought out the interest of another man, became a partner of Mr. Coon, and the Coon & Culbertson firm came into existence.

Coon was already in the registered Hereford business. The new firm continued aggressively, and became world famous before many years it annually registered more calves than any other ranch in the world, according to the American Hereford Breeders Association. Coon & Culbertson cattle ranged over 20,000 acres in seven counties.

Coon & Culbertson 11 years ago originated the now internationally famous Domino Hereford cross, a cross between Domino, the sacred bull of India, and Herefords, the best cattle of the world.

Hereford has never been able to [illegible] on the financial side of the [illegible] in such a [illegible] and the cross

their ranch.

Several times Coon & Culbertson made shipments of 200 bulls. They were proud of the fact that assets of their customers were greater than combined assets of customers of any other ranch, so far as Coon & Culbertson knew. Their customers credited Coon & Culbertson bulls and cows with helping build some of the finest Hereford herds in the nation.

Among Coon & Culbertson customers in addition to the Palomas ranch, were the Terrenos Cattle Co. of Old Mexico, one of the largest in the world; Joe Sneed of Amarillo, Dan Sullivan, Ira G. Yates, San Antonio; Pierce Estate, Pierce, Tex.; Lykes Bros., Tampa, Fla.; King ranch, Kingsville, Tex.; Moody Bros., Galveston; Benjamin Clayton, Springer, N. M.; U. S. government, buying for the Mescalero Indian reservation in New Mexico; Slaughter ranch, Lubbock; W. J. (Billy) Lewis, Clarendon Lasater ranch, Hillsboro, N. M.

SOVIET —

Continued from Page One.

million men on the Finnish border and that more men from Russia's army of 15,000,000 have been called to the fight. Biggest possible aid for Finland is 400,000.

GOVERNMENT MOVES

The Finnish government has left Helsinki, it was reported today but destination was not given.

A Swedish newspaper at Stockholm said the Russian warship damaged by the Finns has sunk.

Anti-Soviet demonstrations and riots have broken out in Sweden and Norway.

U. S. ATTITUDE

U. S.-Red relations are severely strained. Yesterday President Roosevelt appealed to Russia not to bomb Finnish civilians. Molotoff said his plea was "pointless" because Red planes had not bombed civilians and would not do so. State department men in Helsinki meanwhile reported that Red planes were continually bombing civilians there.

Senator Key Pittman (Dem., Nev.) urged U. S. recognition of Russia today suggested it be withdrawn. Senator Borah did not favor breaking relations because he could not see that it would help Finland. Also the bombings of other wise have any constructive result, he

Hospital Wants Waste Metal Tubes To Sell

Loretto Hospital asks Dalhartans to save miscellaneous metal tubes, such as those containing toothpaste, shaving creams, salves, etc., which will be sold to a lead company for funds for the Hospital office.

Mother Judith asked Dalhartans for the metal tubes about a month ago, but received no response.

The hospital needs more filing equipment for its records, and by salvaging the waste tubes, a portion of the equipment may be bought.

FSA Conference To Open Monday

Several hundred Farm Security Administration employees from a five-state region are expected to attend a four-day conference opening Monday in Amarillo.

Washington, D. C. officials scheduled to attend the session include George E. Mitchell, assistant administrator; John O. Walker, director, resettlement division; Mrs. Clara V. Thompson, home demonstration division; Dr. R. C. Williams, medical director; Dr. Carl C. Taylor, head of the division of farm population and rural welfare, B.A.E.

Red Cross Call Ends Thursday

The 1940 Red Cross roll call ended on Thursday and no more contributions for the drive will be taken, C. E. Durgin, county roll call chairman said. A final report on total membership in the county will probably be released Monday.

Under agreement with the Texas Funeralgists Association, the Red Cross drive ends on November 30 and the annual Christmas seal sale opens on December through December

Churches To Have Guest Speakers

Three Dalhart churches will have out-of-town speakers in their pulpits at Sunday services.

Dr. Frank L. Turner, president of McMurry College at Abilene, will preach at the Central Methodist church at 10:50 a. m. and at the Pine Street Methodist Church at 7:30 p. m. He is an outstanding preacher, formerly pastor of a Fort Worth church and commissioner of the Memorial hospital there.

Dr. Elburn Burrows, Ada, Okla., layman, is to speak at 7:30 p. m. services at the Baptist church. Dr. Burrows is a graduate of Oklahoma Baptist University and Baylor University, and has practiced in Ada for several years. He and Mrs. Burrows, who is a daughter of W. L. Young of this city, are en route for San Francisco, where they will sail for India to enter medical missionary work.

Hooks Rites Held In San Angelo

Funeral services for Mrs. J. W. Hooks, found dead of monoxide gas poisoning in the garage at her home Wednesday noon, were held at 2 p. m. Friday at the Robert Massie Funeral Chapel in San Angelo, where her parents, Mr. and Mrs. J. T. Scott, live. The Baptist minister officiated, and a male quartet sang funeral hymns. Burial was in the Fairmont Cemetery, directed by the Robert Massie Funeral Home and Peeples Funeral Home of this city.

Rotarians Learn Of Meter Tests

Forrest Campbell, Abilene head of a West Texas Utilities Co. meter testing department, was guest speaker at the Rotary club luncheon Friday. He explained duties of the crew, methods of testing meters and other details of the work.

CHRISTIAN SCIENCE SERVICES

"God the Only Cause and Creator" is the subject of the Lesson-Sermon which will be read in all Churches of Christ, Scientist, on Sunday, December 3.

The Golden Text is: "Let all the earth fear the Lord: let all the inhabitants of the world stand in awe of him. For he spake, and it was done; he commanded, and it stood fast." (Psalms 33:8,9).

Among the citations which comprise the Lesson-Sermon is the following from the Bible: "Let them praise the name of the Lord: for he commanded, and they were created." (Psalms 148:5)

The Lesson-Sermon also includes the following passage from the Christian Science textbook, "Science and Health with Key to the Scriptures" by Mary Baker Eddy: "God is individual, incorporeal. He is divine Principle, Love, the universal cause, the only creator, and there is no other self-existence. He is omnipresent, and is reflected by all that is real, and eternal and by nothing else. He fills all space, and it is impossible to conceive of such omnipresence and individuality except as infinite Spirit or Mind." (page 331)

Use Newspaper Advertising First!

175 PETITIONER'S EXHIBIT 4.

The Tax Court of the U. S., Div. 4, Docket 4184-5. Admitted in Evidence Nov. 12, 1946.

Coon & Culberson,
Dalhart, Texas.

October 23, 1939.

Mr. A. A. Wright,
National Finance Credit Corporation,
Fort Worth, Texas.

Dear Mr. Wright:

Mr. W. O. Culbertson and Sons will take over the Coon & Culbertson herd November 1st, 1939. Mr. R. S. Coon is selling his interest in the cattle to this new firm—W. O. Culbertson and Sons.

Mr. Culbertson would like to establish a credit with the National Finance Corporation and if this is agreeable with you we would like to have the herd inspected on the 29th of this month. We will tally the cattle over to Mr. Culbertson at the same time your representative inspects the cattle. If the above date can be set for this inspection it would accommodate us.

On behalf of Mr. Coon, I want to thank you and express our appreciation for the manner in which you handled our credit while doing business under the Coon & Culbertson name.

Kindest regards,
(Signed) W. H. COON.
(W. H. Coon)

Dalhart, Texas.

Copy.

176 PETITIONER'S EXHIBIT 5.

The Tax Court of the U. S., Div. 4, Docket 4184-5. Admitted in Evidence Nov. 12, 1946.

The State of Texas,
County of Dallam.

Whereas, the undersigned, W. O. Culbertson and Gladys Culbertson, husband and wife, are the owners of certain live stock, land leases and ranch equipments and supplies, located in Harding County, New Mexico, and,

Desiring to make provisions for the welfare of our sons, W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, and desiring to establish them in business, as and when they arrive at a proper age to engage in business; and, further, desiring to induce our said sons after they reach such state of maturity, to contribute their time and services, in building up and establishing a common family estate, and desiring to suitably reward them for their assistance to us in so doing, and in order to establish with them a limited partnership in a ranching enterprise to be hereafter known as W. O. Culbertson & Sons;

Therefore, Know All Men By These Presents, That we, W. O. Culbertson and Gladys Culbertson, for and in consideration of the sum of Ten Dollars to us paid, and other good and valuable consideration consideration, do hereby and by these presents sell and convey unto W. O. Culbertson, Jr., Richard Culbertson, Jo Jack Culbertson and Eugene Culbertson, and to each, an undivided one-eighth interest, in and to the following described property, to-wit:

About 1400 cows, 35 head of bulls, 50 head of calves, 30 head of horses, together with all ranch equipment, leasehold estates, and any and all other property located on the Harding County, New Mexico Ranch, including property acquired from R. S. Coon, as of Nov. 1st, 1939.

This conveyance is made subject to the following conditions and stipulations, to-wit:

1. The grantors, W. O. Culbertson and Gladys Culbertson, reserve to themselves, the sole and exclusive right and control and management of such properties herein conveyed, with increases thereof, until the time that the youngest of our said sons living shall have arrived at the age of twenty-one years; including the right of sale, or exchange of said property or any part thereof, and the right to purchase or lease lands for the use of the ranch enterprise, either out of earnings or of sales of property on hand; the right to purchase additional livestock; the right to borrow money on the credit of part or all of the property belonging to the ranch, and to pledge the property for security for such money so borrowed; the right to increase by purchase, or to diminish by sale, the livestock on said ranch; to sell any equipment or supplies now belonging to the ranch or to purchase other equipment and supplies; to invest the money derived from sales or from earnings of the ranch as they may deem proper; in fact, to manage and control the property herein conveyed, without restrictions and in such manner as may by them be deemed proper, until the youngest surviving son shall have arrived at the age of twenty-one years; and until such time, it shall not be necessary to obtain the verbal or written consent of either of said sons, or of any instrument in writing from either of said sons, to any transaction desired to be done in the premises, by the grantors herein.

2. It is specifically made a condition of this conveyance, that should there be at any time before the youngest surviving son shall have arrived at the age of twenty one years, any losses sustained in the operation of such ranch, or other enterprises involved, then the grantors, nor either of them, shall become personally liable to the grantees herein, or to either of them, for any part of such losses, but such losses, if any, shall be bourne by such ranch enterprise, and not by any individual owner of any interest therein.

3. It is further made a condition of this conveyance, that neither of our said sons, shall have the right of withdrawal of any part of his interest in such ranch enterprise, or of sale of same, until the youngest surviving son shall have reached the age of twenty-one years, but at such time either one, or all of such sons, shall have the right of withdrawal from such partnership and shall be entitled to receive his interest therein, but his interest shall be equal to an undivided one-eighth in value, or property in kind, after all liabilities, if any, of such ranch or other enterprise has been liquidated.

4. In the event of the death of either of our said sons, prior to such time that the youngest surviving son shall have reached the age of twenty-one years, such deceased son leaving no surviving wife or child or children born in lawful wedlock, then such interest of such deceased son shall vest in his father and mother and surviving brothers and sister, or the surviving ones, according to the rule of descent and distribution prevailing in Texas. In the event of the death of either of our said sons, before the youngest of our surviving sons shall have reached the age of twenty one years, such deceased son leaving surviving him, a wife or child or children born in lawful wedlock, then such share of such deceased son shall

go to and vest in such surviving wife and child or children born in lawful wedlock, according to the law of descent and distribution prevailing in Texas.

5. In the event of the death of grantor, Gladys Culbertson, prior to the time that our youngest surviving son reaches the age of twenty-one years, leaving surviving her, grantor W. O. Culbertson, then the exclusive control and management of said properties, as provided in paragraph No. I. hereof, shall vest in said W. O. Culbertson alone. In the event of the death of said W. O. Culbertson, prior to the time the youngest surviving son shall have reached the age of twenty one years, and said Gladys Culbertson then still being alive, the joint management of said properties, as provided in said paragraph I. herein, shall vest in said Gladys Culbertson and the oldest surviving son. In the event of the death of both W. O. Culbertson and Gladys Culbertson before the surviving youngest son shall reach the age of twenty-one years, then the right of management and control, as provided in paragraph No. I. hereof, shall vest in the two oldest surviving sons.

6. This agreement and conveyance is made in Texas, where all parties now reside. In the event, that for any reason, the subject matter of this conveyance and contract, shall become involved in litigation, it is hereby provided and made a condition herein, that regardless of where the parties may then reside, or regardless of where the subject matter of the litigation may be located, such litigation shall be controlled and determined by the laws of the state of Texas, the same as if the suits were pending in Texas, and the parties resided in Texas, and the subject matter of the suits should be located in Texas.

In Testimony whereof, witness our hand, at Dalhart, Texas, this the 8th day of December, A. D. 1939, but to become effective on the 1st day of January, A. D. 1940.

W. O. CULBERTSON,
GLADYS CULBERTSON.

The State of Texas,
County of Dallam.

Before me the undersigned authority, on this day personally appeared W. O. Culbertson and wife Gladys Culbertson, known to me to be the persons who executed the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

And the said Gladys Culbertson, wife of said W. O. Culbertson, having been examined by me separate and apart from her husband and having the same fully explained to her, she the said Gladys Culbertson acknowledged such instrument to be her act and deed and that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this the 8th day of December, 1939.

R. E. STALLCUP,
Notary Public, Dallam
County, Texas.

My Commission expires June 1st, 1941.

179 PETITIONER'S EXHIBIT 6.

The Tax Court of the U. S., Div. 4, Docket 4184-5. Admitted in Evidence Nov. 13, 1946.

$57674.80 Dalhart, Texas, January 1st, 1940.

On or before one year after date, we promise to pay to the order or W. O. Culbertson & Wife (Gladys Culbertson) the sum of Fifty Seven Thousand Six Hundred Seventy Four and 80/100 Dollars, with interest from date at the rate of four per cent per annum. payable at Dalhart, Texas. This note is given in payment of an undivided one-half interest in an to the W. O. Culbertson Sons ranch, in Harding county, New Mexico, said ranch including cattle, leases, horses, ranch equipment of whatsoever kind.

W. O. CULBERTSON, JR.,
RICHARD R. CULBERTSON,
JOE JACK CULBERTSON,
EUGENE CULBERTSON.

Credit	$ 5,930.00
Of January 1940 overcharge on original Note.	
Balance due on Note	$51,744.80
Credit.	
Dec. 30/1940 Gift as shown on WOC 1940 Income report & Ledger account	4,000.00
Balance due on Note	47,744.80
Credit June 10th/41	30,000.00
Balance due on the above note as of June 10th/41	17,744.80
Credit.	
June 10th/1941 Gift	17,744.80

Paid in Full as of June 10/1941.

INCORPORATED UNDER THE LAWS OF THE STATE OF ARIZONA

No. 6465 — ONE SHARE

AMERICAN HEREFORD ASSOCIATION

KANSAS CITY, MISSOURI

THIS IS TO CERTIFY THAT *W. O. CULBERTSON & SONS* of *DALHART, TEXAS*

is the owner of **ONE SHARE** *of the Capital Stock of the*

AMERICAN HEREFORD ASSOCIATION,

and accepts this Certificate subject to the Articles of Incorporation and By-Laws of the Association and agrees to abide by all the Rules and Regulations of the Association.

This Certificate is issued subject to a lien for any indebtedness due to the Association from the holder hereof.

In Witness Whereof, *the said Association has caused this Certificate to be signed by its duly authorized officers, and to be sealed with the seal of the Corporation.*

Dated November 13, 1939

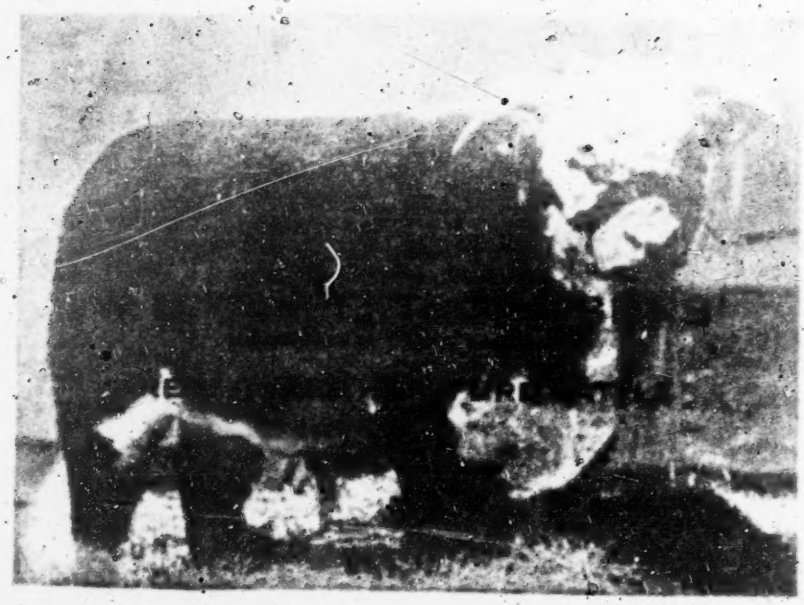
T339

SECRETARY

Seal

PRESIDENT

W. O. CULBERTSON



W. O. CULBERTSON, JR.
RICHARD CULBERTSON
JOE JACK CULBERTSON
EUGENE CULBERTSON

JAYHAWKER OPENING
NO. 5748544
SIRE OF POLLED DORSET RAMS
SIRE OF HEREFORD STEERS

RANCH LOCATED
DUSTERSON, NEW MEXICO

THE TAX COURT OF THE U.S.
DIV. ... DOCKET ...
ADMITTED IN EVIDENCE
NOV 1 1946
PETITIONER'S EXHIBIT 8
RESPONDENT'S

THE TAX COURT OF THE U.S.
DIV. 4 DOCKET 4784
ADMITTED IN EVIDENCE
NOV 1 1946
PETITIONER'S EXHIBIT 8
RESPONDENT'S

183 PETITIONER'S EXHIBIT 9.

The Tax Court of the U. S., Div. 4, Docket 4184-5. Admitted in Evidence Nov. 13, 1946.

No. 3040.

W. O. Culbertson, Jr. et al.
vs.
W. O. Culbertson, Sr. et al.

On this the 27th day of March 1944, coming on to be heard the above styled cause, and the plaintiffs came by their attorney and announced ready for trial, and the defendants came in person and announced for trial, and a jury being waived, the Court heard the pleadings of the parties, and the evidence introduced in behalf of all parties, finds;

(1) That on November 6th, 1939, plaintiffs, W. O. Culbertson, Jr., and Richard Culbertson, Joe Jack Culbertson, Eugene Culbertson, and the defendants, W. O. Culbertson, Sr., and wife Gladys Culbertson, entered into a co-partnership, for the purpose of operating a cattle ranch in Harding County, New Mexico, the property of which consisted of cattle, horses, land leases, ranch equipment, of the total value of approximately one hundred thousand dollars.

(2) That when such partnership was so formed, W. O. Culbertson, Sr., and wife Gladys Culbertson, became the owner of an undivided one-half of the property of such co-partnership; that W. O. Culbertson, Jr. became the owner of an undivided one-eighth, and Richard Culbertson became the owner of an undivided one-eighth, and Joe Jack Culbertson became the owner of an undivided

one-eighth interest of all the property of such co-partnership, and its properties.

(3) That on the 31st day of December, 1940, by arrangement and agreement of the members thereof, Fannie Culbertson became a member of such partnership, by purchase of interest from W. O. Culbertson, Sr. and Gladys Culbertson, of an undivided one-eighth interest in the properties of such co-partnership.

(4) That subsequent to the time Fannie Culbertson became a partner, the interests of each partner was so changed by agreement of parties, so that W. O. Culbertson, Sr. and wife, Gladys Culbertson, became the owners of an undivided one-sixth interest, W. O. Culbertson, Jr. became the owner of an undivided one-sixth interest, Richard Culbertson became the owner of an undivided one-sixth interest, Joe Jack Culbertson, became the owner of an undivided one-sixth interest, Eugene Culbertson became the owner of an undivided one-sixth interest, Eugene Culbertson became the owner of an undivided one-sixth interest, and Fannie Culbertson became the owner of an undivided one-sixth interest, in all the property of such co-partnership.

(5) That the co-partnership so formed on the 6th day of November, 1939, has never been dissolved, ended, discontinued or abrogated, but is now in full force and effect, except as to changes of interest as herein above stated, and that at this time, such co-partnership is in full and active operation as a cattle ranch enterprise.

(6) That on the 8th day of December 1939, the defendants, W. O. Culbertson, Sr. and Gladys Culbertson, executed and acknowledged, an instrument in writing, offered in evidence herein, and a copy of which is attached to the plaintiffs petition.

(7) That at the time of the execution of such instrument, neither of the plaintiffs knew of its execution, and never consented to its execution, and never thereafter acted upon or ratified such instrument.

From the evidence introduced in the trial, the Court finds, and holds as a matter of law:

(a) That on the 6th day of November 1939, the defendants, W. O. Culbertson, Sr., and wife, Gladys Culbertson, and W. O. Culbertson, Jr., and Richard Culbertson, and Joe Jack Culbertson, and Eugene Culbertson, entered into a valid and legal co-partnership arrangement and enterprise, for the purpose of owning and operating a ranch enterprise, located in Harding County, New Mexico.

(b) That the respective interests of such partners, when such co-partnership was formed, was as follows, to-wit: W. O. Culbertson, Sr. and wife, Gladys Culbertson, an undivided one-half interest in such enterprise, and W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson, and Eugene Culbertson, each an undivided one-eighth interest in the properties of such co-partnership.

(c) That on the 31st day of January, 1940, Fannie Culbertson acquired an interest in the property of the partnership and became a member thereof by purchase from W. O. Culbertson, Sr. and Gladys Culbertson, of an undivided one-eighth interest in all the assets and properties of the co-partnership.

(d) That except for the addition in membership, and the change in interest of the individual members, such partnership has continued since its organization on the

6th day of November, 1939, since which time, it has at no time been dissolved, discontinued, abandoned or abrogated, but at all times since such date, has been a valid co-partnership and has been at all times, actively engaged in the ranching business in Harding County, New Mexico.

(e) That by transfer of individual interests, subsequent to the 31st day of January, 1940, the properties of such co-partnership is now owned and held by the following persons, and in the following interests: W. O. Culbertson, Sr. and wife Gladys Culbertson, an undivided one-sixth interest; W. O. Culbertson, Jr. an undivided one sixth interest; Richard Culbertson an undivided one-sixth interest; Joe Jack Culbertson an undivided one-sixth interest; Eugene Culbertson, an undivided one-sixth interest, Fannie Culbertson, an undivided one-sixth interest.

(f) That the instrument executed by W. O. Culbertson, Sr. and Gladys Culbertson, defendants, on the 8th day of December, 1939, offered in evidence, and a copy of which is attached to the plaintiffs' petition, was executed by the defendants, without the knowledge of the plaintiffs, and has never been acted upon or ratified by the plaintiffs, is wholly void in law, and has no effect as effecting the interests of the members of the Co-partnership, and the legal rights of the members thereof.

It is therefore, the decision, the declaration, the order and judgment of the Court, that W. O. Culbertson and Sons, is a legal and valid co-partnership, organized and existing for the purpose of owning and operating a ranch in Harding County, New Mexico, and that the members of such co-partnership are W. O. Culbertson, Sr., Gladys Culbertson, W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson, Eugene Culbertson, and Fannie

Culbertson, and their respective interest are as set out in this judgment.

That the instrument dated December 8th, 1939, executed by W. O. Culbertson, Sr. and wife Gladys Culbertson, is wholly void in law, and has no legal effect on the properties and interests of the Co-partnership of W. O. Culbertson and Sons, and in no manner effects the legal rights of the members of such co-partnership and their rights in same, is wholly void and ineffective.

JAMES W. WITHERSPOON,
Presiding Judge.

The State of Texas,
County of Dallam.

I, R. U. Counts, Clerk of the District Court in and for said County and State, hereby certify the above and foregoing to be a true and correct copy of the Judgment of the Court in the case of W. O. Culbertson, Jr. et al vs. W. O. Culbertson, Sr., et al, Numbered 3040 as the same appears of record in the Minutes of the District Court of Dallam County, Texas, in Vol. 9; Page 385, and on file in my office.

Given Under My Hand And Seal Of Office, this 28th day of March 1944.

(Signed) R. U. COUNTS,
Clerk, District Court, Dallam County, Texas.

187 RESPONDENT'S EXHIBIT A.

The Tax Court of the U. S., Div. 4, Docket 4184-5. Admitted in Evidence Nov. 13, 1946.

State of Texas.
County of Dallam.

Whereas, on the 8th day of December, 1939, W. O. Culbertson and wife, Gladys Culbertson, executed a certain trust instrument, by the terms of which a limited partnership was created between themselves and their sons, W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson and Eugene Culbertson, and by the terms of which a conditional conveyance was made to each of said sons of an undivided one-eighth interest in and to certain properties described in said trust instrument, and the Grantors therein retained to themselves an undivided one-half interest in and to the property so described, a true copy of such trust instrument being hereto attached, marked Exhibit A, and made a part of this instrument in so far as necessary to reflect the tenor and effect of this conveyance now about to be executed by the said W. O. Culbertson and Gladys Culbertson, and;

Whereas, said trust instrument, and the partnership thereby created, is now in full force and effect, and;

Whereas, the said W. O. Culbertson and wife, Gladys Culbertson, now desire to make conveyance to their minor daughter, Fannie Culbertson, a like conveyance of an interest in such partnership, equal to the interest conveyed to each of said sons;

Now, Therefore, we, W. O. Culbertson and wife, Gladys Culbertson, for and in consideration of the sum of Ten Dollars ($10.00) paid, and for other good and valuable

consideration, do hereby and by these presents grant, sell and convey unto the said Fannie Culbertson an undivided one-eighth interst in and to all the property now owned and held by the co-partnership of W. O. Culbertson and Sons, wherever such property may be now located, and being an undivided one-fourth part of the partnership interests now owned and held by said W. O. Culbertson and Gladys Culbertson, but this conveyance of such interests is made subject to all the terms and conditions of the said trust instrument, dated 8th day of December, 1939, a copy of which being hereto attached and made a part hereof.

In Testimony Whereof, Witness Our Hands At Dalhart, Texas, this 31st day of December, 1940.

W. O. CULBERTSON,
GLADYS CULBERTSON.

The State of Texas,
County of Dallam.

Before me, the undersigned authority, on this day personally appeared W. O. Culbertson and wife, Gladys Culbertson, known to me to be the persons who executed the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

And the said Gladys Culbertson, wife of the said W. O. Culbertson, having been examined by me separate and apart from her husband and having the same fully explained to her, she the said Gladys Culbertson acknowledged such instrument to be her act and deed and that she had willingly signed the same for the purposes and

consideration therein expressed, and that she did not wish to retract it.

Given Under My Hand And Seal Of Office, this the 31st day of December, 1940.

W. R. ROBINSON,
(W. R. Robinson)
Notary Public, Dallam
County, Texas.

(Seal)

My Commission expires June 1, 1941.

The state of Texas
County of Dallam.

[illegible] day
[illegible] culed
[illegible] executed the
[illegible] to me that they execu-
[illegible] consideration therein

[illegible] wife of said W. O.
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[illegible] herself.

[illegible] and seal of office, this the
[illegible]

Notary Public, Dallam County, Texas.

My commission expires June 1st, 1941.

[illegible] Texas., May 1st 19 41

[illegible] promise to pay to

[illegible] A Gilstrap Culbertson. 29/100

[illegible] Dollars

[illegible] at Dalhart, Texas.

Value received Fannie Culbertson

Fannie Culbertson,

No. Due 1 Day after date

Respondent's Exhibit "B"—Petition in Case W. Culbertson, Jr., Et Al., vs. W. O. Culbertson, Sr., Et Al., Texas State Court, No. 3040: Conveyance and Trust Agreement from W. O. Culbertson and Glayds Culbertson to W. O. Culbertson, Jr., et al., dated 12/8/39, effective 1/1/40; Answer of Defendants in Case No. 3040, Omitted from the Printed Record, Pursuant to Designations of Counsel as to Printing Record, copied at pages 1 and 1-B.

* * * * * * *

198 RESPONDENT'S EXHIBIT C.

The Tax Court of the U. S., Div. 4, Docket 4184-5. Admitted in Evidence Nov. 13, 1946.

Question and Answer Transcript.

Original.

In the District Court of Dallam County, Texas.

W. O. Culbertson, Jr.
vs. No. 3040.
W. O. Culbertson, Sr.

Appearances:
Hon. R. E. Stalcup, Dalhart, Texas, for the Plaintiffs, W. O. Culbertson and wife, per se.

Be It Remembered, that in the above styled cause, the Court on the 27th day of March, 1944, said time being a continuation of the regular term of said Court, rendered a judgment in said cause, and that the testimony offered

at the hearing of such cause, as set out herein is a full, true and correct statement of such testimony, in question and answer form, together with the exhibits offered in evidence, and is as follows, to-wit:

Mr. Stalcup:

The Plaintiffs call as a witness, the Defendant, W. O. Culbertson.

W. O. Culbertson, one of the Defendants, being sworn by the Court, testified as follows:

201 Direct Examination.

(By Mr. Stalcup):

Q. Mr. Culbertson, you are W. O. Culbertson?

A. Yes, sir.

Q. You are named as one of the Defendants in this suit, now before this Court?

A. Yes, sir.

Q. Mrs. Gladys Culbertson is your wife?

A. Yes, sir.

Q. She is likewise a Defendant?

A. Yes, sir.

Q. W. O. Culbertson, Jr., Richard Culbertson, Joe Jack Culbertson, and Eugene Culbertson, are your sons, and Fannie Culbertson is your daughter?

A. Yes.

Q. And they are the Plaintiffs in this case?

A. Yes, sir.

Q. Mr. Culbertson, were you a member of the old co-partnership of Coon and Culbertson?

A. Yes, sir.

Q. Engaged in the cattle business for many years, here in the Panhandle, and in New Mexico?

A. Yes, sir.

Q. Mr. Coon is now deceased?

A. Yes, sir.

Q. When did that partnership begin?

A. Which partnership?

Q. The Coon and Culbertson partnership?

A. About '15.

Q. You mean 1915?

A. Yes, I mean 1915.

Q. That is about 29 years ago now?

A. Yes, sir.

Q. I believe you ended that partnership about '39?

A. Yes, sir.

Q. That is a friendly way, and liquidating it and dividing it up, somewhat?

A. Yes, sir.

Q. You settled your obligations that you owed then?

A. Yes.

Q. And divided your funds and disposed of the cattle you had on hand?

A. Yes, sir, to an extent, all of the registered stuff.

Q. Now, about the summer or fall of 1939, did you or not, you and Mr. Coon have a certain bunch of cattle still on hand?

A. Yes, sir.

Q. I believe along about November, 1939, it was your desire to take over from the partnership a certain line of cattle that the partnership owned?

A. Yes, about that; the certain date, I just don't remember when it came up.

Q. Did you or not have a conversation with Mr. Coon with reference to buying his side, his interest in this string of cattle?

A. Yes, I did.

Q. Did you finally buy these cattle from Mr. Coon?

A. Yes, sir.

* * * * * * *

(By Mr. Stalcup):

Q. In other words, when you sold the boys these cattle they gave you a note at that time?

A. Yes, they did.

Q. Then, following the transaction,—well, I will show this in a few minutes;—I advised you to get a new form of note to correspond with another transaction and take up the old note?

A. That is right.

Q. Then, you gave this note and destroyed the old notes dated as of November 6th?

A. Yes, you have got it right. You might have done that.

Q. But, this note of January 1st, is really the same consideration that was contained in the old notes that the boys gave you when the partnership was formed?

A. Yes, sir.

(The Court):

Q. This note here, you have marked Plaintiffs' Exhibit No. 7, introduced here, is the note which took up another note that the boys gave the same day of the sale?

A. Yes, that is a renewal note.

(By the Court):

Q. This is a renewal note and extension of the same day that you gave the boys the bill of sale?

A. Yes, that is a renewal of it. I did that under advice of Bob (Mr. R. E. Stalcup) here.

(By the Court):

Q. He is your attorney here?

A. Yes, under his advice I did that.

(By Mr. Stalcup):

Q. After the formation of the partnership of W. O. Culbertson and sons, I will ask you if you and your sons

had in mind that you would probably want to materially enlarge your cattle holdings over there in New Mexico?

A. I don't know that we talked much about that.

Q. Well, you had it in mind that you might need to borrow a lot of money?

A. Let me explain that this way. I know that you can't run a business without having a financial place to borrow money. We all know that,—to run your business on.

Q. Well, in order to prepare yourself, in case you needed the money, did you take up the matter with some cattle loan company in Fort Worth?

A. Yes, I talked to Mr. Wright, or his general manager of the North Texas Finance Credit Corporation that we did business with before. However, at this time, we did not owe them anything,—but at this time we might not need the finances. I told him (Mr. Wright) about my new partnership.

Q. You explained to Mr. Wright why you might need some money and told him all the facts about the partnership?

A. Yes, I told him I had a new partnership;—that we had dissolved the other one.

Q. That Coon & Culbertson was out?

A. Yes, they (Coon & Culbertson) had used the money with this firm and we had settled up.

Q. You had paid off?

A. Yes, we did not owe them anything.

Q. Then, you had an idea you might need,—W. O. Culbertson and Sons might need some more money, and you went back there?

A. Well, I happened to be in Fort Worth and told him. I took it up with him while there, at his office in Fort Worth.

Q. Well, did Mr. Wright give you or attempt to give you any advice or suggestion, or make any objections?

A. Yes.

Q. On the partnership arrangement or tell you to do something?

A. Yes, I talked to Mr. Wright about it. He said: "You better get your partnership business in a form of writing whereby you will have the right to go on and borrow money". And knowing that the boys were liable to go to the Army and would not be here, that was talked up with Mr. Wright, that they might go to the Army,—which has happened. We had that in mind. He said: "You better get that in a form of writing,—a common partnership".

Q. Now, it was Mr. Wright's idea, conveyed to you, that you should prepare yourself, or have prepared, some kind of a document, assuming for yourself, regardless of the law or anything else resulting, control and management of the partnership affairs;—having that in view, you went to your attorney in Dalhart and told him what kind of an instrument to draw up for you?

A. Yes, and to show that I could sell the cattle and turn in the proceeds and get the business running, having in mind that the boys might have to go to the Army.

Q. Then, you came to me, to see me, your lawyer to talk to me and you told me what Mr. Wright required of you?

A. Yes, that Mr. Wright had suggested that idea to me.

Q. And you had me prepare for you an instrument?

A. I did not have that prepared. I told you about what I wanted, but did not tell you how to write it. I told you about what I wanted;—something that you wrote up.

Q. Now then, I did prepare an instrument that expresses your wishes in the matter?

A. Yes, you prepared an instrument there that you said you thought was just about what I wanted.

Q. You did that, following Mr. Wright's suggestion or request?

A. Following his suggestions? He did not request anything.

Q. Well, in preparing that document and signing it, you and your wife, you did not go and tell the boys what you were doing or intended to do,—you just went ahead?

A. I never told the boys anything about it. They never knew anything about it at all.

Q. And, up to this minute, they have never done anything in the way of ratifying of what you did;—they just did not do anything?

A. No, they did not even read it—they did not do anything about it, until later.

Q. They did not do anything about it for two or three years?

A. No.

Q. It was not their document;—it was your document?

A. I followed Mr. Wright's request,—to get something in the form of a partnership so he could carry me, so he could carry my finances with him. He said: "We would be glad to carry it";—and they have an association whereby they are discounting paper,—and he explained that to me.

* * * * * *

(By Mr. Stalcup):

Q. You had the money to pay Mr. Coon for his interest in the cattle?

A. Yes, I had that money, but I got an Affidavit setting it out to them.

Q. Since Fannie Culbertson became a partner and having an interest in the cattle business, on December 31st, 1940, the respective interests of the various parties have been changed again, have they?

A. Yes, they have.

Q. That has been largely done by agreement of the parties and as a matter of bookkeeping?

A. I have made at different times, a gift report to the Government, showing I gave so much. You have a right to make Forty Thousand in a year. That has been turned in as a gift. That took care of some of this payment.

Q. By gift, or sale, or otherwise, the partnership interests have been changed from its original status, to until today you and your wife Gladys Culbertson, own only a one-sixth interest in the cattle business?

A. Yes, only a one-sixth interest in the cattle business.

Q. How much does Fannie Culbertson own?

A. A one-sixth interest.

Q. The four boys own a one-sixth interest each; and there were five children, each owning a one-sixth interest,—and you and your wife have one-sixth interest?

A. Yes, that is in the cattle business. We own the ranches.

Evidence Closed.

* * * * * *

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FORM 1065
Treasury Department
Internal Revenue Service

PARTNERSHIP RETURN OF INCOME 1940

(To be Filed Also by Syndicates, Pools, Joint Ventures, Etc.)

For Calendar Year 1940

or fiscal year beginning , 1940, and ended , 1941

(File this return not later than the 15th day of the 3d month following the close of the taxable year)

(PRINT PLAINLY NAME AND BUSINESS ADDRESS OF THE ORGANIZATION)

W.O.CULBERTSON & SONS
(Name)

P.O.BOX 1410
(Street and number)

DALHART (Post office) DALLAM (County) TEXAS (State)

Business or Profession

Do Not Use This Space

File Code

Serial No. 973224

District

(Date Received)

APR 17 1941

GROSS INCOME

1. Gross receipts from business or profession		$ 29,237.17
2. Less cost of goods sold:		
(a) Inventory at beginning of year	$ 109,250.00	
(b) Merchandise bought for sale	4,665.88	
(c) Cost of labor, supplies, etc.		
(d) Total of lines (a), (b), and (c)	$ 104,915.88	
(e) Less inventory at end of year	131,460.00	26,544.48
3. Gross profit (or loss) from business or profession (item 1 minus item 2)		$ 55,781.68
4. Income (or loss) from other partnerships, syndicates, pools, etc. (state name, address, and amount)		
5. Interest on bank deposits, notes, corporation bonds, etc. (except interest to be reported in item 6)		
6. Interest on tax-free covenant bonds upon which a Federal income tax was paid at source		
7. Interest on Government obligations, etc. (from line (2), Schedule A)		
8. Rents		
9. Royalties		
10. Net gain (or loss) from sale or exchange of property other than capital assets (from Schedule B)		
11. Dividends		
12. Other income (state nature of income)		
13. Total income in items 3 to 12 (enter here and on line 3, Schedule F (1))		$ 55,781.68

Col. Int. Rev. Dist. MAR 19

DEDUCTIONS

14. Salaries and wages (do not include compensation for partners)	$ 4,220.20	
15. Rent	2,086.28	
16. Repairs	1,017.41	
17. Interest on indebtedness (explain in Schedule E)	1,084.64	
18. Taxes (explain in Schedule C)	786.38	
19. Losses by fire, storm, shipwreck, or other casualty, or theft (attach schedule, see Instruction 7)		
20. Bad debts (explain in Schedule D)		
21. Depreciation (explain in Schedule E)	1,116.03	
22. Depletion of mines, oil and gas wells, timber, etc. (attach schedule, see Instruction 22)	19,487.87	
23. Other deductions authorized by law (explain in Schedule F)		
24. Total deductions in items 14 to 23		$ 34,719.41
25. Ordinary net income (item 13 minus item 24)		$ 21,062.27
26. Net short-term capital gain (or loss) (from line 1, column 4, Summary, Schedule H)		
27. Net long-term capital gain (or loss) (from line 2, column 4, Summary, Schedule H)		

NOTE.—In order that this return may be accepted as meeting the requirements of the Internal Revenue Code, the data called for herein must be set forth FULLY and CLEARLY.

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 7)

1. Obligations or securities	2. Amount owned at end of year	3. Interest received or accrued during the year
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	$	$
(b) Obligations issued under the Federal Farm Loan Act, or under such Act as amended		
(c) Obligations of the United States issued on or before September 1, 1917		
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness		
(e) United States Savings Bonds and Treasury Bonds	$	$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported on line (b) above)		
(g) Total of lines (e) and (f), column 3 (enter as item 7, page 1)		$

Schedule B.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS. (See Instruction 10)

1. Kind of property	2. Date acquired	3. Gross sales price (cash or fair market price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition but not before March 1, 1913 (Furnish details)	7. Gain or loss (column 3 plus column 6 minus the sum of columns 4 and 5)
		$	$	$	$	$
Total net gain (or loss) (enter as item 10, page 1)						$

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items:

If any of the above items were acquired by you other than by purchase, explain fully how acquired:

Schedule C.—TAXES. (See Instruction 14)

Nature	Amount
	$
Total (enter as item 18, page 1)	$

Schedule D.—BAD DEBTS. (See Instruction 20)

1. Taxable year	2. Net income reported	3. Sales on account	4. Bad debts charged off by corporation if no reserve is carried on books	If corporation carried a reserve: 5. Gross amount added to reserve	6. Amount charged against reserve
1937	$	$	$	$	$
1938					
1939					
1940					

NOTE. Check whether deduction claimed represents worthless debts charged off ☐, or is an addition to a reserve ☐.

Schedule E.—DEPRECIATION. (See Instruction 21)

1. Kind of property (If building, state material of which constructed)	2. Date acquired	3. Cost or other basis (If you did not include land or other non-depreciable property)	4. Assets fully depreciated on use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in computing depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$
Total (enter as item 21, page 1)								$

Schedule F.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 17 AND 23

1. Item No.	2. Explanation	3. Amount	1. Item No. (continued)	2. Explanation (continued)	3. Amount (continued)
		$			$

Schedule G.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE A. (See Instruction 13)

1. Nature of income	2. Nature of exemption	3. Amount
		$

W. O. Culbertson & Sons,
High Grade & Registered Cattle,
Box 1410. Dalhart, Texas.

W. O. Culbertson

Ranch Located
Bueyeros. N. M.

W. O. Culbertson, Jr.
Richard Culbertson.
Joe Jack Culbertson.
Eugene Culbertson.

1940.

Item 17, Schedule F—Interest.

National Finance Credit Corporation of Texas, Fort Worth, Texas	$ 987.91
First National Bank in Dalhart, Dalhart, Texas	36.73
	$1,024.64

W. O. Culbertson & Sons,
High Grade & Registered Cattle,
Box 1410. Dalhart, Texas.

W. O. Culbertson

Ranch Located
Bueyeros. N. M.

W. O. Culbertson, Jr.
Richard Culbertson.
Joe Jack Culbertson.
Eugene Culbertson.

1940.

Item No. 16—Repairs.

Dalhart Hardware Co.	$ 128.53
Foxworth Galbraith Lmbr. Co.	101.78
Shollenbarger Merc.	224.42
M. A. Reed	106.00
Jones Paint Store	64.25
B. Shiplett	52.21
J. F. Ross	100.00
John Burns Lmbr. & Hwd. Co.	57.63
A. C. Beller	31.46
Miscellaneous	151.33
	$1,017.61

W. O. Culbertson & Sons,
High Grade & Registered Cattle,
Box 1410. Dalhart, Texas.

W. O. Culbertson

Ranch Located
Bueyeros. N. M.

W. O. Culbertson, Jr.
Richard Culbertson.
Joe Jack Culbertson.
Eugene Culbertson

1940.

Deductions—Item 22, No. 15—Rent.

W. C. DeBaca, Clayton, New Mex.	$3,204.00
Various Grass Pasture Rentals	98.00
W. O. Culbertson (Swoyer Ranch), Dalhart, Texas	1,500.00
Norman Libbey, Bueyeros, New Mex.	4,284.20
	$9,086.20

W. O. Culbertson & Sons,
High Grade & Registered Cattle,
Box 1410. Dalhart, Texas.

W. O. Culbertson

Ranch Located
Bueyeros. N. M.

W. O. Culbertson, Jr.
Richard Culbertson.
Joe Jack Culbertson.
Eugene Culbertson.

1940.

Item 23—Other Deductions.

Stationery & Postage	$ 159.12
Coal (for Ranchhouses)	104.94
Commissions	44.00
Telph-Tlgrms & Advertising	390.86
Oil & Gas (used on ranches)	962.60
Automobile repairs	624.45
Groceries & Meals	1,297.51
Freight & Trucking	1,536.18

Feed	12,494.29
Miscellaneous (Dues, Registering, Drugs, etc.)	1,813.38
Total	$19,427.27

W. O. Culbertson & Sons,
High Grade & Registered Cattle,
Box 1410. Dalhart, Texas.

W. O. Culbertson

Ranch Located
Bueyeros. N. M.

W. O. Culbertson, Jr.
Richard Culbertson.
Joe Jack Culbertson.
Eugene Culbertson.

1940.

Item No. 21—Depreciation.

	Date Acquired	Additions	Rate	Prior Reserve	Depreciation 1940
Autos-Pickups, etc.—					
Ford Truck	2- 1-38	1,187.11	33⅓	395.70	395.70
Pickup	7- 1-38	725.95	"	241.99	241.98
Ford Auto	2- 1-39	585.46	"	178.86	195.15
Auto	1-31-40	556.85	"	.....	170.17
Trailer	8- 1-40	131.60	"	.....	18.30
					1,021.30
Furniture—					
Various	1-31-39	68.90	10%	6.32	6.89
"	3- 1-39	20.00	"	1.66	2.00
"	5- 1-39	267.80	"	17.86	26.78
"	7- 1-39	25.00	"	1.24	2.50
"	1-31-40	235.00	"	.....	21.56
					59.73
Farm Equipment—					
Various	1- 1-40	350.00	"	....	35.00
Total					$1,116.03

Schedule G.—TAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE A. (See Instructions 14)

Schedule H.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instructions 26, 27)

1. Kind of property (If necessary, attach statement of the acquired (specify sub-division below)	2. Date acquired (Mo., Day, Year)	3. Date sold (Mo., Day, Year)	4. Gross sales price (see instr. under which period)	5. Cost or other basis	6. Expense of sale and cost of improvements (unless shown in column 5)	7. Depreciation allowed (or allowable) since acquisition	8. Gain or loss (Col. 4 plus Col. 7 less Col. 5 and 6)	Gain if included in other income
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 18 MONTHS								
			$	$	$	$	$	
Total net short-term capital gain or loss (enter in line 1, column 2, of summary below)							$	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS								
			$	$	$	$	$	
Total net long-term capital gain or loss (enter in line 2, column 2, of summary below)							$	
LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS								
			$	$	$	$	$	
Total net long-term capital gain or loss (enter in line 3, column 2, of summary below)							$	

SUMMARY OF NET CAPITAL GAINS OR LOSSES

	2. Net gain or loss (as by taking into account items shown in columns 5, 6, and 7 of Schedule H, above)		3. Net gain or loss (as by taking into account items shown in columns 5 and 6 of Schedule H, above)		4. Total net gain or loss (as by taking into account items shown in columns 4, 5, 6, and 7 of Schedule H, above)	
	Gain	Loss	Gain	Loss	Gain	Loss
Total net short-term capital gain or loss (enter in column 5, line 1, amount of gain or loss shown in column 4)	$	$	$	$	$	$
Total net long-term capital gain or loss (enter in column 5, line 2, amount of gain or loss shown in column 4)	$	$	$	$	$	$

If any of the above items were acquired by you other than by purchase, explain fully how acquired.

Schedule I.—CONTRIBUTIONS PAID. (See Instruction 28)

	Amount
	$

Total (enter in column 16, Schedule B)

Page 4

Schedule J.—PARTNERS' SHARES OF INCOME AND CREDITS. (See Instruction 28)

	1. Name and address of each partner (If corporate membership shown) Where return of partner or member is filed in any other collection district, specify district. If the full name of any partner was not dictated to the business, the percentage of time devoted must be stated	2. Dividends not included in line 1 on Common stock obligations, etc., subject to excise only (from 2b, page 1, column total 7 (a), page 1)	3. Net short-term gain (or loss) from sale or exchange of capital assets (from Schedule H, Summary, line 1, column 4)	4. Net long-term gain (or loss) from sale or exchange of capital assets (from Schedule H, Summary, line 2, column 4)
(a)	Miss Fennie Culbertson	$ 7825 17	$	$
(b)	Richard B. Culbertson	7825 17		
(c)	Joe Jack Culbertson	7825 17		
(d)	Eugene Culbertson	7825 17		
(e)	W. O. Culbertson, Jr'	9025 17		
(f)	W. O. Culbertson Sr'	23475 48		
(g)				
Totals		$ 63601 83	$	$

CONTINUATION OF SCHEDULE J

	5. Tax-exempt interest received or accrued	6. U.S. obligations (see Sch. A)		7. Other interest on certain governmental obligations (see Sch. A)		8. Earned income credit (see Sch. J)	9. Federal income tax paid or withheld at source (from line 6, page 1)	10. Income and profits taxes paid to a foreign country or United States possession
		Principal	Interest	Principal	Interest			
	$	$	$	$	$	$	$	$
(a)						1565 03		
(b)						1565 03		
(c)						1565 03		
(d)						1565 03		
(e)						1805 05		
(f)						4695 10		
Totals	$	$	$	$	$	12760 25	$	$

QUESTIONS

1. Date of organization January 1st/1941
2. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Partnership
3. Was a return filed for the preceding year? Yes (If not, explain why.)
4. (Check whether this return was prepared on the cash ☐ or accrual basis.)
5. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market, whichever is lower. Cost

If any other basis is used, attach statement describing basis fully, state why used and the date inventory was last reconciled with stock.

6. Did the taxpayer at any time during the taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company, as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") No

If answer is "Yes," attach schedule required by Instruction I.

7. Was return of information on Form(s) 1096 and 5999 filed for the calendar year 1941? (See Instruction H) Yes

AFFIDAVIT (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return, made in good faith, for the accounting period stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Subscribed and sworn to before me this 16 day of July, 1942.

W O Culbertson
(Partner or member)

(Signature and title of officer administering oath)

(Address of partner or member)

(If this return was prepared for you by some other person, the following affidavit must be executed)

AFFIDAVIT (See Instruction D)

I (we) swear (or affirm) that I (we) prepared this return for the organization named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income of the person for whom this return has been prepared of which I (we) have any knowledge.

Subscribed and sworn to before me this

20th day of January, 1942.

G. Tolar Notary Public,

The Dunn County, Texas, expires [illegible]

(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm or employer, if any)

Respondent's Exhibit "F"—Letter, W. O. Culbertson & Sons to William G. Cullen, Head, Southwestern Division, Technical Staff, Bur. of Int. Revenue, dated 4/23/46; omitted from the Printed Record, pursuant to Designations of Counsel as to Printing Record, copied at pages 1 and 3.

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259 PRAECIPE FOR RECORD.

The Tax Court of the United States.

Filed Nov. 21, 1947.

W. O. Culbertson, Petitioner,
vs. Docket No. 4184.
Commissioner of Internal Revenue, Respondent.

Gladys Culbertson, Petitioner,
vs. Docket No. 4185.
Commissioner of Internal Revenue, Respondent.

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit copies duly certified as correct of the following documents and records in the above styled causes, in connection with the Petition for Review by the said Circuit Court of Appeals for the Fifth Circuit, heretofore filed by the petitioners above named:

(1) Docket entries of the proceedings before the Tax Court of the United States.

(2) Stipulation of the parties for consolidation on petition for review.

(3) Pleadings in the above causes.

(4) Findings of fact and opinion of the Tax Court entered June 24, 1947 (Disney, Judge).

(5) Decisions of the Tax Court of the United States entered August 6, 1947, in Docket 4184 and 4185 (Kern, Judge).

(6) Petition for review and assignments of error, together with the proof of service of notice of filing petition for review and assignments of error.

(7) Statement of the evidence as settled and agreed upon, together with all exhibits received in evidence.

(8) This praecipe.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Fifth Circuit.

BENJAMIN L. BIRD,
(Benjamin L. Bird),
Attorney for Petitioners.

WEEKS, BIRD, CANNON & APPLEMAN,
909-913 Sinclair Building,
Fort Worth, Texas.

Service of a copy of the foregoing praecipe is hereby admitted this 20th day of Nov., 1947, and said praecipe is hereby agreed to.

(Signed) CHARLES OLIPHANT, CAH.
(Charles Oliphant),
Attorney for Petitioners.

.....

Chief Counsel,
Bureau of Internal Revenue,
Internal Revenue Building,
Washington, D. C.

CERTIFICATE

The Tax Court of the United States,
Washington.

William O. Culbertson, Sr., Gladys Culbertson, Petitioners,
vs. Docket Nos. 4184, 4185.
Commissioner of Internal Revenue, Respondent.

I, VICTOR S. MERSCH, Clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 260, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 31st day of December, 1947.

VICTOR S. MERSCH,
Clerk, The Tax Court of the
United States.

(Seal)

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of June 8th, 1948

No. 12232

W. O. CULBERTSON, SR., and GLADYS CULBERTSON

versus

COMMISSIONER OF INTERNAL REVENUE

On this day this cause was called, and, after argument by Benjamin L. Bird, Esq., for petitioners, and Homer R. Miller, Esq., Special Assistant to the Attorney General, for respondent, was submitted to the Court.

OPINION OF THE COURT—Filed June 30, 1948

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 12232

W. O. CULBERTSON, SR., and GLADYS CULBERTSON, Petitioners,

versus

COMMISSIONER OF INTERNAL REVENUE, Respondent

Petition for Review of Decision of the Tax Court of the United States (District of Texas)

(June 30, 1948)

Before Hutcheson, McCord, and Waller, Circuit Judges

WALLER, Circuit Judge:

For nearly a quarter of a century William O. Culbertson and R. S. Coon were partners in the cattle-raising business near Dalhart, Texas. Coon raised many cattle but had no children. Culbertson raised both. He had four sons, a daughter, and a one-half interest in approximately fourteen hundred head of cattle at the time of the transaction around which this case centers. Coon furnished the finances; Culbertson looked after the cattle. About the time the

Culbertson boys reached the age of twelve, each, like most ranch-reared boys, began to work on the ranch at various and sundry jobs.

In 1939, due to the age and health of Mr. Coon, it was determined to liquidate the herd and dissolve the partnership. To that end the partnership sold some three hundred and fifty head of Braford cattle to the four boys, but before the transaction was fully completed, a friend of the parties sought to buy these cattle from the partnership. At the suggestion of Mr. Coon, the friend bought them from the boys, paying a profit of $5.00 per head.[1]

By October, 1939, the herd had been reduced to approximately fourteen or fifteen hundred registered cattle. Thereupon Culbertson offered to purchase the remainder of the herd at a price around $65.00 per head. Four persons were present in the office of Coon & Culbertson in Dalhart on the night the proposition of the sale of Coon's interest in the partnership cattle to Culbertson—or to Culbertson for his four sons was tentatively agreed upon. The witnesses all recount Coon's long-standing avocation and hobby of breeding Hereford cattle and his interest in seeing that the strain thus developed should continue. The witnesses all agreed that Coon stated that he would accept Culbertson's proposition to buy his interest in the cattle provided that Culbertson would, in turn, sell same, to the latter's four sons, who had worked on the ranch and who would be able to carry the herd into the future; that Culbertson desired to talk to his sons first; that he did talk to them, and that the offer was accepted and the trade was consummated by a bill of sale from Coon & Culbertson to Culbertson, and another bill of sale from Culbertson to his four sons. All witnesses agreed as to the fine quality of registered Hereford cattle that had been bred through the years, Coon's interest in its continuation, as well as his interest in, and friendship for, the Culbertson boys—for the education of two of whom he had provided in his lifetime and for the other two he had provided in his will.

There was no mention of income tax or tax consequences in the discussions leading up to, and consummating, the deal. All witnesses were agreed that the idea uppermost was the continuation of the cattle-breeding business of Coon & Culbertson through the instrumentality of Culbertson and the sons of Culbertson, who, since childhood, had worked on the ranch with the cattle and one of whom was then foreman, and later manager, of the ranch. There is not the slightest proof in the evidence but that the four Culbertson

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[1] Although this transaction had no direct connection with the partnership that is alleged to have been formed later between Culbertson and his sons, nevertheless, it is indicative of the interest of the Culbertson boys in cattle and the interest of Mr. Coon in the Culbertson boys.

boys each acquired a one-fourth interest in the one-half interest of Coon in the cattle in question. The partnership of Coon & Culbertson, as well as Culbertson and his sons, owned no land but utilized grazing leases.

It is conceded that the father put up the money for the purchase of the cattle from Coon and that he in turn sold that half interest to his sons and took their note therefor; that in addition to the note being given by the boys for the amount necessary to purchase Coon's cattle, they also gave their note for the purchase of a one-half interest in other miscellaneous properties which had theretofore been used at the ranch. Neither is it disputed that a considerable portion of the purchase price was returned to the elder Culbertson by the sale, in due course, of partnership cattle, and that the balance then remaining unpaid on the notes was canceled as a gift. It is also undisputed that thereafter Culbertson gave a one-eighth interest in his own cattle to his daughter, but since it was not contemplated that the daughter would perform services or contribute capital to the partnership, no effort is made here to have her considered, or included, as a partner for tax purposes.

The plan whereby all four of the boys would work on the ranch when they were not in school was disrupted by the War. All were put into the military service. The education of the younger ones was delayed, and at the time of the hearing two of the boys were still in school. Upon his release from the service, the oldest son resumed his job as foreman or manager of the ranch and the second had also done some work there after his return from the War and from college.

The Dalhart newspaper, quoting Mr. Culbertson, announced in December, 1939, the fact of the dissolution of the Coon & Culbertson partnership, and that in the future the business would be operated by the Culbertson boys under the name of Culbertson and Sons. A bank account was opened in the name of W. O. Culbertson and Sons, upon which the father and either of his four sons could check. The membership of Coon & Culbertson in the American Hereford Association at Kansas City, the place where Hereford cattle are registered, was changed to W. O. Culbertson and Sons, to whom an appropriate certificate was issued.

Mr. W. H. Coon, the nephew of the elder Coon, wrote to Mr. Wright, the manager of the National Finance Credit Corporation, on November 23, 1939, stating that: "Mr. W. O. Culbertson and Sons will take over the Coon & Culbertson herd November 1st, 1939. Mr. R. S. Coon is selling his interest in the cattle to this new firm—W. O. Culbertson and Sons." Concededly, W. O. Culbertson and Sons was not a corporation or mere trade name. A partnership return for W. O. Culbertson and Sons for the year 1940 was filed with the Collector of Internal Revenue. The letterheads of W. O.

Culbertson and Sons showed the names of the father and his four sons thereon.

A reading of all the evidence thus far could leave no one in the slightest doubt as to the intent, purpose, and effect of the transaction in question. However, the Commissioner contends that the picture changes upon observance of a second instrument that was drawn up after the first bill of sale was executed from father to sons. This second bill of sale also looms large in the consideration of this case by The Tax Court. It will be remembered that two of the Culbertson boys were minors at the time of the formation of the partnership. It will also be remembered that the new partnership required financing. When inquiry was made from Mr. Wright of the finance company, Mr. Culbertson was told that it would be necessary for him to have some sort a paper showing that he had a right to execute mortgages, sign notes, and the like for the partnership. With only this purpose in view, he sought out an attorney, whose idea of the way to accomplish such a result was to prepare another bill of sale wherein the right to execute mortgages and notes, and manage the affairs of the company until the youngest boy became twenty-one, was ostensibly retained in the father. It is undisputed that neither of the boys was aware of the execution of this second bill of sale until long afterwards. It seems also quite clear that the second paper was without any legal force or effect because the father had theretofore made and delivered to his sons an absolute bill of sale to the cattle with no strings attached. He, acting alone, could no more recall it than

"Can storied urn, or animated bust
Back to its mansion call the fleeting breath."

The father was a ranchman and unlearned, particularly in the law. After the import of the second bill of sale was realized, a proceeding was had in the State Court wherein it was declared null and void. The Tax Court considers this proceeding as collusive. At least it was non-adversary because it was with the consent of all parties that the proceeding was brought and the invalidity of the instrument decreed. Assuredly this paper did not represent any valid agreement of the parties. Had the proceeding been adversary, no other result could possibly have been reached because the second bill of sale was, to say the least, voidable and not binding upon the sons in the absence of their ratification. It would not have protected the finance company as against them. It could not have had the effect of postponing the initiation of the partnership until the youngest son became twenty-one years of age, nor could it have otherwise adversely affected the rights acquired, and vested, under the true bill of sale.

It was the purpose and intent of all the parties to form an actual,

real, and *bona fide* partnership between Culbertson and his four sons, with the full expectation and purpose that the boys would, in the future, contribute their time and services to the partnership. We do not consider that it is illegal, income-tax-wise or otherwise, for a partnership to be formed in consideration, or contemplation, of services rendered, *or to be rendered*, by the partners. The fact that the boys were called into the military service by the United States, as well as the fact that some of them had not, during the tax period, completed their education so as to devote their full time and attention to the partnership is in no wise indicative that the partnership was formed for the purpose of dividing the family income, or for the purpose of income tax savings. The failure by a partner to render service to the partnership or to contribute capital originating in him, is, after all, but a circumstance to be considered in determining the reality or actuality of an alleged family partnership. The failure to do either is not a condition precedent.

There is no evidence but that the partnership was entered into validly and in good faith, and that the first bill of sale from the father to the sons was a legal and binding document; that this partnership was entered into without any idea, purpose, or thought of the tax consequences but with the idea of carrying on the breeding of fine Herefords in the traditions of that section of the country. The fact that in seeking financial assistance a void document was executed by one of the partners which contained ineffective and untrue recitations would not destroy the legality and *bona fides* of the partnership validly entered into theretofore. Undue weight and emphasis given to this invalid document by The Tax Court seem to have led it into a holding that is in disregard of the realities and contrary to the purpose and intent of the parties. When this second bill of sale is considered in the true light of its invalidity, and in the light of the circumstances attending its execution, it will readily be seen that the first bill of sale evidenced the real transaction and that it remained unimpaired and in full force and effect.

In the cases of Commissioner v. Tower, 327 U. S. 280, and Lusthaus v. Commissioner, 327 U. S. 293, the Court determined that the arrangements there were mere devices entered into for income tax savings and purposes and not for the benefit of the partnership. To conclude in this case that the plan and purpose of an aging father to enlist the interest and services of his four ranch-reared, experienced, and stalwart sons in the carrying on of his and his partner's life work was not for the partnership's benefit seems to require the exaltation of suspicion over the realities to an extent that the exigencies of the times for tax collection neither deserve nor demand. There was no showing in 1939, when the partnership was formed, of the anticipation of huge profits. The old partnership was in the process of liquidation and had reduced its herd from

several thousand to fourteen or fifteen hu. dred. No one dreamed then that the lush prices of a year or so later were so close at hand. On the contrary, the old partners were only a short way out of the greatest depression the country has ever known and the memory of hardships, drouths, and dust storms, necessitating the shipping in of foodstuffs for the cattle was still fresh in their minds.[2]

Nor do we think the fact that subsequently, and in an entirely separate transaction, the father undertook to make provision for his daughter by giving her a partnership interest in the cattle which he had retained disproves the *bona fides* of the arrangement with his sons for her interest in the cattle is not a subject of the controversy here. Taxpayer concedes that she contributed no capital and neither performed, nor intended to perform, services in the operation of the ranch.

It seems that out of the cases of Lusthaus v. Commissioner, *supra*, and Commissioner v. Tower, *supra*—which cases were properly decided on their peculiar facts—a concept has been born and is carefully nurtured by the tax collecting agencies that no partnership is valid—income-tax-wise—between members of a family unless the members of the family coming into the partnership actually contribute money or had actually, *theretofore*, rendered services. Neither statute, common sense, nor impelling precedent requires the holding that a partner must contribute capital or render services to the partnership prior to the time that he is taken into it. These tests are equally effective whether the capital and the services are presently contributed and rendered or are later to be contributed or to be rendered. Moreover, a partnership is formed to act in the future and not in the past and when it is fully expected, intended, and agreed that the incoming partner

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[2] Mr. W. O. Culbertson testified as follows:

"Well, we done a lot of visiting, talking about the herd and the hardships and hazards we'd went through and the general conversation about what had happened to us and we'd done a very good job getting through. Had dry weather and shipped hay in to feed the cattle and it was pretty tough. Mr. Coon happened to be able to take care of finances through his credit and we didn't go broke as usually some people did in them years, but we had a general discussion about that and he told me during that night, he brought that up about the cattle and he says he had a desire to see this herd go on, it was a herd of cattle it takes years to develop and he says, 'Developing a good herd of cattle is a lifetime job.' He had made that remark a lot of times, and he had a desire to see the herd go on. He says, 'I will sell you my interest in the herd if you will in turn sell it to your four boys at the price you are paying for it' and this was the price that I had mentioned."

will render services to the partnership, the Government should not be heard to say: "I will not recognize you as a partner even though you in good faith entered into it. I took you into the Army to fight a war and you did not perform services for the partnership as you had agreed to do."

The inquiry as to a family partnership for income tax purposes must relate to evidence bearing on the reality, the actuality, and the bona fides of the transaction,[3] or the absence thereof. Where the proof conclusively shows that a family partnership was entered into for the benefit of the business and not the purpose of evading, avoiding, or dividing, income taxes, it will be deemed a partnership for income tax purposes even as it was recognized in the law for all other purposes.

Income generally should be taxed to him who owns it. The Culbertson boys owned one-half the cattle that produced the income here.

Neither the Constitution, the statutes, nor public policy requires that partnerships between fathers and sons be outlawed or discouraged. The desire of a father in any age or clime, with a business that he cherishes and a son that he loves, to have such son with him in his business and to carry it on when he no longer can, was not rendered an anathema by the Lusthaus and Tower cases, and aberrations from the salutary rules announced in those cases should not now do so.

We think that the evidence shows conclusively that the partnership here was actual, real, *bona fide*, and entered into for the

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[3] See Belcher v. Commissioner of Internal Revenue, 162 F. 2d 974, wherein this Court said:

> "Notwithstanding the fact that there is no Federal statute which makes the gift of a partnership interest to a member of the taxpayer's family illegal, or that expressly lays the tax upon a husband or father who makes a lawful gift of a partnership interest to members of his family, and although it has long been, and is still, the law that a taxpayer has the right to avoid or lessen his taxes by means that are lawfully available, it is now well settled that such means must be realities, not shams, substance, not shadows. Family partnerships are not ipso facto illegal under Federal law but such partnerships must be shown to be accompanied by investment of capital, participation in management, rendition of services by the family partners or by such other indicia as will definitely demonstrate the actuality, the reality, and the bona fides of the arrangement."

benefit of the partnership, with no thought of income taxes and no purpose to evade, divide, or defeat their collection.

The judgment of The Tax Court is, therefore,

Reversed.

JUDGMENT

Extract from the Minutes of June 30th, 1948

No. 12232

W. O. CULBERTSON, SR., and GLADYS CULBERTSON

versus

COMMISSIONER OF INTERNAL REVENUE

This cause came on to be heard on the petition of W. O. Culbertson, Sr., and Gladys Culbertson for a review of a decision of the Tax Court of the United States, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the judgment of the said Tax Court in this cause be, and the same is hereby, reversed.

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 181 to 194 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 12232, wherein W. O. Culbertson, Sr., and Gladys Culbertson are petitioners, and Commissioner of Internal Revenue is respondent, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 180 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 3rd day of September, A. D. 1948.

Oakley F. Dodd, Clerk of the United States Court of Appeals, Fifth Circuit. (Seal.)

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 805802 330

Supreme Court of the United States

No. 313, October Term, 1948

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*

vs.

W. O. CULBERTSON, SR. AND GLADYS CULBERTSON

Order allowing certiorari

Filed December 6, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.